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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No ~~251~~ 48.

THE KNIGHTS Ttemplars AND MASONS' LIFE INDEMNITY COMPANY, PETITIONER,

vs.

ROSA B. JARMAN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI FILED FEBRUARY 18, 1901.
CERTIORARI AND RETURN FILED MARCH 18, 1901.

(18,055.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No 254

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, PETITIONER.

vs.

ROSA B. JARMAN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 19, 1901.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1900, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit: the seventh day of May, A. D. 1900, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit: on the twentieth day of October, A. D. 1899, a transcript of record, pursuant to a writ of error directed to the circuit court of the United States for the western district of Missouri, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein The Knights Templars and Masons' Life Indemnity Company was plaintiff in error, and Rosa B. Jarman was defendant in error, which said transcript of record as printed pursuant to the stipulation of the parties for use of the court upon the hearing of said cause, is in the words and figures following, to wit:

1 United States Circuit Court of Appeals, Eighth Circuit December Term, A. D. 1899.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois, a Corporation, Plaintiff in Error,
vs.
ROSA B. JARMAN, Defendant in Error.
} No. 1347.

It is hereby stipulated and agreed that the record in the above-entitled case shall not be printed in full, and that those parts only, which are hereby designated, shall be printed in full, the parts to be omitted also being indicated.

1st. Print citation with acknowledgment of service.
2nd. Print writ of error.
Omit transcript from circuit court of Grundy county, Missouri.
Omit stipulation as to time for answer.
3rd. Print agreed statement of facts.
4th. Print Exhibit A, being application for membership.
5th. Print Exhibit B, policy of membership.
6th. Print Exhibit D, constitution of company.
7th. Print Exhibit E, statistics of company.
8th. Print record entries.
9th. Print judgment.
10th. Print assignment of errors.
11th. Print petition for writ of error.

12th. Print caption of bill of exceptions with first page of same.

Omit agreed statement of facts but refer to former printing as follows: "Agreed statement of facts appears on pages — — of this record."

Omit Exhibits "A" "B" "D" and "E," but refer to former printing in each case as above in case of agreed statement of facts.

Print "Act of Illinois under which the defendant company was organized, entitled" etc.

Print certificate of authority of insurance department of Missouri, issued to defendant company, and the note appearing thereunder.

2 Print senate bill No. 105 as originally introduced.

Print extracts from the Senate Journal and House Journal of 39th General Assembly of Missouri.

Print section 5869 as it was before the amendment of 1897 and as it is now, amended.

Print the remainder of the bill of exceptions, being the memorandum of submission of the case, the declarations of law applying thereto, the judgment, and the exceptions taken to such declarations and judgment.

13th. Print the bond.

14th. Print the opinion of the court.

15th. Print the certificate of the clerk.

The clerk of the said court is respectfully requested to print only the parts of the record herein designated.

HERVEY B. HICKS,
Attorney for Plaintiff in Error.
HARBER & KNIGHT,
Attorneys for Defendant in Error.

No. 1347. United States circuit court of appeals, eighth circuit. K. T. & M. L. I. Co. *vs.* Jarman. Stipulation as to printing the record. Filed Oct. 26, 1899. John D. Jordan, clerk. H. B. Hicks, att'y for pl'ff in error.

UNITED STATES OF AMERICA, *set:*

To Rosa B. Jarman, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division of the western district of Missouri, wherein The Knights Templars and Masons' Life Indemnity Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John F. Philips, judge of the circuit court of the United States for the western division of the western

district of Missouri, this 25th day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN F. PHILIPS, *Judge.*

3 UNITED STATES OF AMERICA, } *ss:*
Western Division of the Western District of Missouri, }

We hereby acknowledge due service of the within citation this 29th day of August, A. D. 1898.

HARBER & KNIGHT,
Attorneys for Defendant in Error.

2341. United States circuit court, western district of Missouri, western division. Rosa B. Jarman *vs.* The Knights Templars and Masons' Life Indemnity Co. Citation. Filed Aug. 31, 1899. Adelaide Utter, clerk.

UNITED STATES OF AMERICA, *set:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the western division of the western district of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the April term, 1899, thereof, between Rosa B. Jarman, and The Knights Templars and Masons' Life Indemnity Company, a manifest error hath happened, to the great damage of the said The Knights Templars and Masons' Life Indemnity Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 24th day of October, 1899, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Seal of the United States Circuit Court for the Western District of Missouri, Western Division.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court. Issued at office in Kansas City, this 25 day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

ADELAIDE UTTER, *Clerk.*

Allowed by—
JNO. F. PHILIPS,
U. S. Dist. Judge.

4 UNITED STATES OF AMERICA, } *set:*
Western Division of the Western District of Missouri, }

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals, a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal of the United States Circuit Court for the Western District of Missouri, Western Division.

In witness whereof, I hereto subscribe my name and affix the seal of said circuit court of the United States for the western division of the western district of Missouri. Issued at office in Kansas City, this ninth day of September, A. D. 1899.

ADELAIDE UTTER, *Clerk.*

2341. United States circuit court, western district of Missouri, western division. Rosa B. Jarman *vs.* The Knights Templars and Masons' Life Indemnity Co. Writ of error. Filed Aug. 28, 1899. Adelaide Utter, clerk.

* * * * * * *

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

ROSA B. JARMAN, Plaintiff,
vs.
KNIGHTS TEMPLARS & MASONS' LIFE INDEMNITY COMPANY OF ILLINOIS, a Corporation, Defendant.

Now on this day come the parties to the above-entitled cause and agree to submit to the court for its determination the matters in controversy and agree that the following are the facts and agreements upon which the same shall be decided:

First. That the defendant was organized in the State of Illinois, May 5th, 1884, under and in accordance with the provisions of "An act to provide for the organization and management of corporations, associations or societies, for the purpose of furnishing life indemnity or pecuniary benefits to widows, orphans, heirs, relatives and devisees of deceased members, or accident or permanent disability, indemnity to members thereof," which said act was approved June 18, 1883, and in force July 1st, 1883. Said act is hereby admitted in evidence. That the said defendant company, immediately after its organization as aforesaid, commenced to do business in the State of Illinois, and has so continued to the present time. That defendant company, soon after its organization and incorporation began to do business in the State of Missouri, solicited applications therein and appointed among others W. C. Swazey its agent at Trenton, Grundy county, Missouri.

5

Second. That on the 19th day of October, 1885, John P. Jarman, then husband of this plaintiff, and at said time and all times thereafter up to the date of his death, hereinafter stated, a resident of the

city of Trenton, Grundy county, Missouri, made application through the defendant's agent at Trenton, Missouri, for membership in defendant company. That Exhibit "A," hereto attached, is an exact copy of the application made by said John P. Jarman, and is hereby made a part hereof, by reference thereto, and admitted in evidence in lieu of the original, to have the same force and effect as the original would have if so admitted.

Third. That said application was received by defendant company, on or before October 24th, 1885, and on said date defendant issued to said John P. Jarman, its policy of insurance or certificate of membership No. 861. Said policy or certificate marked "Exhibit B," being attached to the original petition in this cause, and an exact copy thereof, marked "Exhibit C" is hereto attached and made a part hereof, and either or both, as may be most convenient, may be referred to and considered as a part hereof.

Fourth. That said policy or certificate of membership was delivered by defendant's agent to John P. Jarman in the city of Trenton in Grundy county, Missouri, on or about the 25th day of October, 1885.

Fifth. That said "Exhibit D," which is hereto attached and made a part hereof, is an exact copy of the by-laws known as the constitution of said defendant company, as they were originally adopted, and shows under each section the constitutional amendment or amendments, if any, which have been made from time to time in said constitution up to the present time, and when they were made, and while it is admitted that the said amendments were made pursuant to the requirements of the constitution, and in accordance therewith, the legal effect of the said amendments as to the contract in question, is expressly reserved for determination.

Sixth. That on the 18th day of June, 1888, the defendant company complied with the act of the legislature of the State of Missouri, entitled: "Insurance companies on the assessment plan," Laws of 1887, page 199, and thereafter, until February, 1898, did business in the State of Missouri, upon the assessment plan. That, at the last-mentioned date, defendant having learned of the passage
of an act of the legislature entitled "An act to repeal section
6 5869 of article 3, chapter 89 of the Revised Statutes of Missouri, of 1889, entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, relating to the statement of affairs of assessment insurance companies and misrepresentation- made in securing a policy of insurance and defense thereon for such misrepresentations," approved March 15, 1897, ceased to do business in said State of Missouri.

Seventh. That John P. Jarman, while insane to such an extent as to be incapable of understanding the nature or consequences of his act, took his own life, and came to his death on the 12th day of September, 1898, by a gunshot wound, inflicted by himself. It is not contended, however, by plaintiff, that said self-destruction was the result of accident.

Eighth. That during his lifetime, said John P. Jarman paid all the assessments and charges of every kind levied against him by defendant company, and continued in good standing up to the time of his death aforesaid. That since his death, the plaintiff herein, beneficiary in said certificate, has fully complied with all the conditions and requirements thereof.

Ninth. The defendant reserves the right to have considered the House Journal, (regular session) 39th Gen. Assembly 1897, and Senate Journal, (regular session) 39th General Assembly, 1897, of Missouri, to show all the proceedings pertaining to senate bill No. 105, entitled "An act to repeal section 5869 of article 3, chapter 89 of the Revised Statutes of Missouri of 1889, entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance and defense thereon, for such misrepresentations" and the same are hereby considered in evidence.

Tenth. That Exhibit "E" which is hereto attached and made a part hereof, contains certain statistics and facts relating to defendant company, which in so far as they bear upon the issues involved, are admitted in evidence with any additional facts touching the history or practice of the company which may be added upon the trial of the case.

Eleventh. It is further agreed between the parties hereto that in case the court finds that section 5855 R. S. 1889 of Missouri does not operate against the defendant company as to this action, the
7 defendant company is relieved from the payment of the policy aforesaid by the self-destruction of John P. Jarman, except as provided in said policy, and that in this case the finding for the plaintiff shall be for the sum of $811.83 the total amount of assessments paid by said John P. Jarman without interest.

That if the court find that the contract in question in this action is subject to the provisions of section 5855 R. S. 1889, referring to suicide, and that the amendments of the constitution of defendant company become a part of the contract of John P. Jarman, the finding shall be for the plaintiff in the sum of $5,000.00 with interest thereon from November 28, 1898, at the rate of 6% per annum.

That if the court shall find that the contract in question is subject to section 5855 aforesaid and is affected by the amendments of the constitution of defendant company made January 8, 1889, but not by the amendments made in said constitution January 14, 1896, finding shall be for the plaintiff in the sum of $5,192 with interest thereon from November 28, 1898, at the rate aforesaid.

That if the court shall find that the contract in question is subject to section 5855 aforesaid and was not affected by either or any of the amendments of the constitution of defendant company, the finding shall be for the plaintiff in the sum of $5,811.83 with interest thereon from November 28, 1898, at the rate of 6% per annum.

The plaintiff herein contends that the refusal of defendant to make payment to her is under the circumstances of this case, wrongful and vexatious. Wherefore it is further agreed between the parties hereto that if the court should be of the opinion and find that the defendant has wrongfully and vexatiously refused to pay the plaintiff the sum found to be due her, if the finding be for plaintiff, there shall be added as provided by section 5927 R. S. 1889 for Missouri, ten per cent. upon the sum so found to be due to plaintiff without interest.

Twelfth. That the parties hereto have attempted to include all statements of fact deemed necessary for a fair determination of matters at issue between them, but it is expressly agreed that if any questions are brought up in argument which are not made clear by this statement, or if the court or either party shall desire further information upon the facts of any matter in issue, the same may be supplemented by further agreement between the parties or by either party introducing the evidence thereon.

8 It is further agreed that all pleadings herein are waived and that the case may be submitted to the court for its decision a jury trial being expressly waived, upon the facts herein presented and those which may be added upon the trial and argument of the case, and that in case either party hereto appeals from the decision of this court, this statement of facts, together with any additional facts which are produced upon the argument and trial of the case and the declarations applying to the case which are made by the court, all of which, with the exceptions, if any, thereto, shall be reduced to writing and added hereto shall be the record upon which this case shall be presented to the appellate court, if it shall be so appealed.

HARBER & KNIGHT,
Attorneys for Plaintiff.
HERVEY B. HICKS,
Attorney for Defendant.

Said Exhibit A is in words and figures as follows:

OCT. 24TH, 1885.

Application to the Knights Templars and Masons' Life Indemnity Company.

Home office, Chicago, Illinois.

Particulars Required from Persons Proposing to Effect a Membership in the Company and Forming the Basis of the Contract.

Number of membership, 861.

Post-office address, ——.

1. Name (in full) of the party proposed for membership. John P. Jarman.

2. Present residence. Trenton in the county of Grundy, in the State of Missouri.

3. Profession or occupation. State precise nature of business. Druggist.

4. Place and date of birth. Richmond, Ky. Year, 1841. Month, Sept., day, 23.

5. Are you married or single? Married.

6. A. Are your habits at the present time and have they always been sober and temperate? A. Yes.

B. Do you use intoxicating drinks habitually as a beverage? B. No.

C. Are you engaged in any way in the retailing of alcoholic liquors? C. Only as a druggist.

7. Have you been successfully vaccinated? A. Yes.

8. Are you subject or predisposed to dyspepsia, dysentery, diarrhœa, or any other disease or bodily infirmity? No.

9 9. Have you had, or been afflicted, since your childhood, with any of the following complaints: Separate answer required to each query.

Disease of the lungs or pulmonary complaints, no. Spitting or raising blood, no. Rupture, no. Fits or convulsations, no. Insanity, no. Rheumatism, no. Dropsy, no. Bronchitis, no. Fistula, no. Bilious colic, no. Paralysis, no. Apoplexy, no. General debility, no. Spinal disease, no. Gout, no. Cancer, no. Calculus or gravel, no. Smallpox, no. Scrofula, no. Eruptions or diseases of the skin, no. Syphilis, no. Sunstroke, no. Asthma, no. Palpitation or disease of the heart, no. Disease of the liver, kidneys or brain, no. Or any serious disease, no.

Q. Have you ever met with any accidental or serious personal injury? No.

11. Have you ever been seriously ill? If so, when, with what complaint, and who was the medical attendant? State his name and residence. No.

12. Are you now in good health? Yes.

13. Has either of your parents, or any of your brothers or sisters died of, or been afflicted with consumption, scrofula, insanity, gout, or any pulmonary complaint or any hereditary disease? (State particulars.) Father died of acute bronchitis.

14. A. Are your parents living? If so, what are their ages?

A. Father's age if living? —. Mother's age if living? 65.

B. If dead, at what ages and of what diseases did they die?

B. If dead, father's age at death? 60.

Cause of death? Acute bronchitis.

B. If dead, mother's age at death —. Cause of death? —.

(N. B.)—In giving "Cause of death" avoid all indefinite terms such as fever, general debility, exposure, etc. If the word "childbirth" be used, specify how long after delivery the death occurred, and whether it was accompanied by any disease of the chest.

15. How many brothers and sisters have you had? No. Brothers 3. No. Sisters, 3.

16. How many are living and what are their ages? No. Brothers, 1. Ages, 38. No. Sisters, 2. Ages, 43, 33.

17. How many of them are dead, and at what ages, and of what

diseases did they die? Died in infancy, don't know the disease.

10 No. Brothers dead, 2. Ages, —. Causes of death? 1. Don't know, died in infancy.

No. Sisters dead, 1. Ages, —. Causes of death? Don't know, died in infancy.

18. What is the present and general state of health of parties referred to in queries 14 and 16? Good.

19. Are you now a member of this company, or have you ever been? If so, state number of membership and amount. No.

20. Have you any insurance on your life? If so, where, and for what amount? Yes, $2,500. N. W. Masonic. $2,000 K. of Honor.

21. Has any proposal or application to insure your life ever been declined or made to any company, association or agent, upon which, a policy or certificate has not been issued, or any physician given an unfavorable opinion? If so, state full particulars? No.

Q. Where have you resided, (during the summer and winter) during the last ten years? Kentucky and Missouri.

23. On what plan and basis, as to amounts of benefits, do you desire to be admitted? $5,000.00 and all the money paid in assessments.

24. To whom do you wish the benefit paid (unless otherwise ordered during your lifetime or in your will) and relationship existing between you? My wife, Rosa B. Jarman and my children.

N. B.—Where no provision is made it will go to your widow, children or heirs and in the order named.

25. Have you had the plan of this company fully explained to you and do you understand its benefits? —.

26. To what Masonic degree have you attained? In what body, and where? (The highest degree attained and body is sufficient.) 3rd degree, Trenton lodge, 111.

I do h-reby declare that, as the basis of my application for membership in the Knights Templars and Masons' Life Indemnity Company that I am now in good health and do ordinarily enjoy good health, and that in the above proposal I have not withheld any circumstance or information touching the past or present state of my health, or habits of life with which the officers of the Knights Templars and Masons' Life Indemnity Company ought to be made acquainted.

11 And I do hereby agree that the statements and representations contained in the foregoing application and declaration shall be the basis of the contract between me and the said Knight Templars and Masons' Life Indemnity Company; the truthfulness of which statements and representations I do hereby warrant, and that if the same, or any of them, are in any respect untrue, or if there shall be any omission or neglect to pay any of the assessments or annual dues, on or before the days on which they shall fall due, except as provided for in the days of grace by the constitution and by-laws of this company, that then, in either event, the membership which may be issued hereon shall be void, and all moneys

which may have been paid on account of such membership shall be forfeited to said company; and, inasmuch as only the officers of the company have the authority to determine whether or not a membership shall issue on any application, and as they act on the written statements and representations referred to, it is expressly understood and agreed that no statements, representations or information made or given by or to the person soliciting or taking this application for a membership or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, representations or information be reduced to writing, and presented to the officers of the company at the home office in the above application. I further agree, that under no circumstances shall the membership hereby applied for, be in force until the actual payment to and acceptance of, the membership fee, by an authorized agent of the company, during my lifetime and good health. I further agree, if accepted, to abide by the constitution, rules and regulations of the company, as they now are, or may be constitutionally changed hereafter.

Dated at Trenton, Mo., this 19th day of October, 1885.

JOHN P. JARMAN, *Applicant.*

W. H. GRAY,
General Manager.
W. C. SWAYZE,
Witness, Box 89.

Medical Examiner's Report.

The medical examiner will please give an explicit answer to each of the following questions and ask such others as he may deem proper under the circumstances of the case giving any information elicited thereby and make the examination, in all respects, thorough, exact and circumstantial.

He should carefully read the accompanying application for membership before making the examination and note any points in the same requiring special attention

12 *Questions Each of which is to be Answered by and in the Handwriting of the Medical Examiner.*

1. Name (in full) of the person examined. John P. Jarman.

2. A. Do you believe the person examined to be the party on whose life the accompanying application is made? A. Yes.

B. How long have you known him? B. 6 yrs.

(The examining physician is requested to satisfy himself in all cases as to the identity of the party being examined.)

3. Description of the person examined. Weight, 140 lbs. Height, 5 ft. 6 in. Figure, erect. Measure around the abdomen, 34½.

A. How long have you held this weight? B. Have you recently increased or diminished in weight? No.

Circumference of the chest, at rest, 33¼ in.; under forced expiration, 31 in.; under forced inspiration, 35¼. Descended from what

race? (As English, Scotch, etc.) English and Irish. General appearance, healthy or unhealthy? Healthy.

Hair, dark; eyes, brown; complexion, fair; temperament, sanguine.

4. A. Are the functions of the brain, the muscular and nervous system in a healthy state? A. Yes.

B. State whether the party has ever *has* had paralysis, vertigo, tremors, catchings of any parts, or other nervous affections? No.

5. Does auscultation and percussion of the chest indicate any disease of the heart or respiratory organs? No.

6. A. Is the respiratory murmur clear and distinct over both lungs? Yes.

B. Is the character of the respiration full, easy and regular? B. Yes.

C. Are there any indications of disease of the organs of respiration? C. No.

7. A. Is the character of the heart's action uniform, free and steady? A. Yes.

B. Are its sounds and rhythm regular and normal? B. Yes.

C. Are there any indications of disease of this organ or of the blood-vessels? C. No.

8. A. State the rate and other qualities of the party's pulse? A. 72, sitting. 78 standing.

B. Does it intermit? B. No.

C. Does it become irregular or unsteady? C. No.

13 9. Is he subject to habitual cough or expectoration, difficulty of breathing or palpitation? No.

10. A. Are the functions of the abdominal and genito-urinary organs in a healthy state? A. Yes.

B. Does rupture exist? If so, state its character and extent and whether the applicant wears a truss? B. No.

11. Has the person any predisposition, either hereditary or acquired, to any local or constitutional disease? No.

12. Have you any reason to believe that his parents, brothers, sisters, uncles or aunts ever had pulmonary or other disease hereditary in their nature?

In case either of the parents of the applicant *having* been affected with or died of disease hereditary in its nature, the medical examiner is requested to state the facts in the case, especially the age of the parent so affected, and whether the applicant resembles the parent so affected in general temperament, constitution, etc. No.

13. A. Does he resemble the father or mother in general temperament, constitution, etc.? A. Mother.

B. Do you answer from personal knowledge? B. I do not answer from personal knowledge.

14. A. Has the person ever had any severe injury or illness? No.

B. If so, has it had any effect on his constitution? B. No.

C. Is there any indication that he is not now entirely well? C. No.

D. Whether deaf, dumb, blind or lame? D. No.

15. A. Does the party habitually use ardent spirits wine, or malt liquors? A. No.

B. If so, to what extent? B. —.

C. Are there indications that would lead you to suppose that the applicant has led or leads other than a sober and temperate life? C. No.

16. If the person's weight be much over or under the average or if the family history, or if any disease or injury or any other circumstance connected with him, should seem to affect seriously the character of the risk, the reason for recommending it should here be given.

17. A. Have you carefully read the answers of the applicant in the annexed application? Yes.

B. Do they reveal any facts which you deem of special importance to comment upon in your report; and if so, what are they? B. No.

14 18. Do you consider the person's life safely insurable and do you recommend that a certificate of membership be granted? I do.

19. The medical examiner will as far as possible, obtain from the party examined the history of his grandparents and fill up the annexed spaces.

	Age if living.	Condition of health.	Age at death.	Cause of death.
Father's mother.....	.....	.....	90.	Old age.
Father's father.....	.....	.. ..	65.	Cholera.
Mother's mother.....	.....	.....	70.	Don't know.
Mother's father	.....	.....	75.	Don't know.

J. P. Jarman, signature of person examined, to be attached in the presence of the medical examiner.

Received payment for the above examination.

JNO. A. WEBSTER, M. D.,
Medical Examiner.

Examined at Trenton, Mo., this 19th day of October, 1885.

Additional Remarks—Notice to Applicant and Doctor.

The applicant is in all cases expected to pay and the physician to collect the amount of his fee, of $1.50, for this examination at the time it is made, which amount, if the application is approved by the medical director, will be credited on your initiation fee at the home office.

W. H. GRAY,
General Manager.

October 23, 1885.

Approved,
J. L. WHITE,
Med. Director.

(ORIGINAL EXHIBIT B.)

$5,000. No. 861.

The Knights Templars and Masons' Life Indemnity Company.

In consideration of twelve dollars and the agreements and stipulations hereinafter expressed, John P. Jarman, druggist of Trenton, Mo., is admitted to membership in the Knights Templars and Masons' Life Indemnity Company, for the term of life, from the twenty-fourth day of October, 1885, at 12 o'clock noon, and in further consideration that the said John P. Jarman shall pay all dues and assessments made upon him as such member in pursuance of the constitution and by-laws of said company, at the times and in the manner required of him, the said company will pay, at their principal office, within sixty days after notice and satisfactory proof of the death of said member is furnished said company, to Rosa B. Jarman, wife, the children or heirs of said member, and in the order named, (unless otherwise ordered by the member in his application, or if he chooses, subsequently by will or otherwise; in which case the company shall be notified by the member in writing and the receipt of such notification be duly acknowledged by the company—see section 6 of article 7 on the back of this policy), the sum of five thousand dollars, and all the money paid on the policy in assessments, subject to the limitation as to the amount of such payment as is provided in section one (1), of article seven (7), of the constitution on the back of this policy. At the end of each ten (10) years continuous membership, the said John P. Jarman shall receive a bond bearing three (3) per cent. annual interest payable with the bond, for his entire proportion of the surplus, as per article seven (7), section two (2), which bond is available at any time, without notice, in payment of assessments as set forth in article seven (7), section three (3) of the constitution on the back of this policy.

This policy is issued and the said John P. Jarman is admitted to membership in this company, and this policy is accepted by said member upon the following agreements and stipulations which are made a part of this contract.

1st. The application on which this policy is issued is made a part of this policy, by reference thereto, and the answers to questions and statements therein shall be a warranty of the truth of such answers and statements and if this policy has been obtained by or through any fraud, misrepresentations or concealment, or by any false statement, then this policy shall be absolutely null and void, and this company may cancel the same, which shall work a forfeiture of all rights under this contract.

2nd. Any failure to pay assessments as provided in conditions printed on the back of this policy, shall forfeit the membership in this company of the holder of this policy, and all benefits arising therefrom; but may be subsequently restored upon such terms as the directors of the company may fix.

3rd. The holder of this policy shall be bound by the post-office address given in the application until the company shall receive

notice and acknowledge the same, of a change of such address, and then such post-office address shall bind such member until this company shall receive notice of, and acknowledge, a different post-office address.

4th. That if the holder of this policy shall impair his health,
16 during the time of his membership in this company, by the habitual use of intoxicating drinks, or of opium, upon proof of such fact being made to the satisfaction of the board of directors of this company, such member shall forfeit all claims upon this company and shall be dropped from the roll of its members.

5th. The holder of this policy during the continuance of his membership in this company, is freely permitted to reside in any settled portion of the western hemisphere lying north of the thirty-second parallel of north latitude at all seasons of the year; and in the United States lying south of said thirty-second parallel, excepting from the first day of July until the first day of November in each year, and in the eastern hemisphere lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich at all seasons of the year; and in Italy south of forty-second parallel excepting from the first day of July to the first day of November in each year; and he may also pass as a passenger by the usual routes of public conveyance to and from any port or place within the foregoing limits; but if he shall at any time during continuance of his membership in this company, pass beyond or be without the foregoing limits, or shall be personally engaged in blasting, mining or submarine operations, or in the manufacture or transportations of explosive substances, or as an employé in any capacity on any sea, lake or river, or any other body of water, or upon any railroad train or if he shall enter into military service, whether voluntarily or otherwise, (the militia when not in actual service alone excepted), without the consent of this company previously given in writing, signed by the president or one of its vice-presidents or if his death shall result from injuries received while under the influence of alcoholic liquors; or in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane, or in case of his death resulting from any violation of the laws of any nation, State or province, or from any aerial voyage or trip; then in each and in every of the foregoing cases, this policy shall become null and void, and the widow and heirs or devisees of said member shall have no claims for benefits on this company.

Provided that in the case of the suicide of the holder of this policy, then this company will pay to his widow and heirs or devisees such an amount on his policy as the member shall have paid to this company on this policy in assessments on the same without interest.

6th. To avoid lawsuits, and yet insure the ends of justice, it is
17 expressly stipulated and agreed that all disputes arising between this company and the claimant or claimants of benefits inuring under this policy, shall be settled by arbitration, and in the manner provided by article 8, section 2 of the constitution of

this company, as the same appears printed on the back of this policy.

7th. It is further agreed by the holder hereof that, unless claim is made for benefits under this policy by the widow, heirs, devisee or devisees of the said member within six months after the death of said member, then, and in that case all claims for benefits under this policy shall be forfeited, and this company shall be released from all liability for such benefits.

8th. It is further agreed that the constitution or by-laws printed on the back of this policy shall separately and collectively form a part of this contract.

In witness whereof, the said Knights Templars and Masons' Life Indemnity Company has caused these presents to be signed by its president, countersigned by its general manager, and affixed its seal in the city of Chicago, State of Illinois, this 24th day of October, 1885.

[SEAL.] J. ADAM ALLEN, *President.*

Countersigned by
W. H. GRAY,
General Manager.

Constitution of the Knights Templars and Masons' Life Indemnity Co.

Entered according to act of Congress in the year 1884 by W. H. Gray, in the office of the Librarian of Congress at Washington.

ARTICLE 1.

Name and Object.

SECTION 1. This company shall be known as the Knights Templars & Masons' Life Indemnity Company.

SECTION 2. The object of this company shall be to furnish life indemnity or pecuniary benefits to the widows, orphans, heirs, relatives, devisees or legatees of deceased members, according to the regulations and provisions hereinafter specified.

SECTION 3. The principal office of the company shall be at Chicago, Illinois, but the board may establish branch offices elsewhere.

ARTICLE 2.

Officers and Directors.

SECTION 1. The officers of this company shall be a president, vice-president, second vice-president, and medical director, to be chosen annually by the board of directors.

18 SECTION 2. The affairs of the corporation shall be managed by not less than five nor more than nine directors, who shall be elected from and by the members provided that, as near as practicable, an equal number shall be elected each year for a period not to exceed three years. Vacancies occurring in the board shall be filled by the majority vote of all the directors.

SECTION 3. At the election for directors, and on all questions com-

ing properly before the company, every member shall have the right to one vote, either in person or by proxy, for every full one thousand dollars mentioned in his policy at the time of its issue.

ARTICLE 3.

Duties and Powers of Directors.

SECTION 1. It shall be the duty of the board of directors to hold in trust the property and assets of this company in accordance with the provisions of this constitution and the by-laws adopted in pursuance thereof.

SECTION 2. The board of directors shall have power to employ any agent, agents, or other service, for such time and on such terms and with such powers, as in their judgment will best promote and conserve the interests of the company.

SECTION 3. They shall have power to remove (*and*) officer for inefficiency or malfeasance, in office at any regular meeting of the board of directors, two-thirds of all the directors voting for such removal, provided the accused shall have thirty days' previous notice of the charges and specifications and shall have the right of self-defense before the board of directors, in person or by counsel. But before the trial of such charges, a majority of all the board of directors may suspend an officer from his office until such trial can be had.

SECTION 4. The board of directors shall select a suitable depository for the funds of the company, which shall be considered safe by the general public. All moneys deposited therein shall be withdrawn only on the check of the president of the company and countersigned by at least one other director. In case of the absence or inability of the president to act, the first or second vice-president may act in his stead.

SECTION 5. The board of directors shall have full charge of all matters not herein provided for, and shall fix the time of the annual meeting of the company.

19 ARTICLE 4.

SECTION 1. When an applicant has complied with the constitution and by-laws and been accepted, the board of directors shall make over to him through officers of the company a policy of membership, stating the terms and conditions of the contract between the parties, which policy shall be sufficient evidence of his membership at the time it was issued and shall constitute the basis of settlement with the beneficiaries; but no person shall be entitled to the benefits of this company until such certificate is issued and delivered.

SECTION 2. Post-office address.—It shall be the duty of all the members to keep the company fully advised of any change of residence or post-office address always giving full address.

SECTION 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars and all the money paid in assessments upon the policy, but no member shall hold more than one policy at the same time. Any holder of a policy

may change the amount of his benefit, from a lower to a higher amount by the surrender of his policy furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director and paying the sum of five dollars and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

SECTION 4. Upon the death of any member an assessment increasing with age, shall be made upon the surviving members, provided an assessment is needed, according to the following table of rates:

Said table is drawn for $1,000 which shall be the unit in determining all other amounts:

Table of Rates—Assessments per $1,000.

Years, of age, inclusive,			21 to 30	$0.50
"	"	"	31 to 35	.60
"	"	"	36 to 40	.65
"	"	"	41 to 45	.80
"	"	"	46 to 50	.95
Years of age, inclusive,			51 to 55	1.20
"	"	"	56 to 60	1.50
"	"	"	61 to 65	2.00
"	"	"	66 and upwards	2.55

But no assessment shall be made so long as the money in the death fund will pay the maximum loss in full.

SECTION 5. There shall be an annual due of one dollar per one thousand dollars on the face of the policy, payable on or within ten days after each anniversary of the policy, and a failure to pay said due shall work a forfeiture of the policy of the same as an unpaid assessment.

ARTICLE 5.

SECTION 1. Seventy-five per cent. of all moneys arising or accruing from assessments shall be placed to the credit of the death fund, which fund shall be used for no other purpose than the payment of death losses.

SECTION 2. All other moneys shall be placed in a contingent fund out of which the expenses and emergencies are to be met, and all the remainder or surplus shall be invested in some reliable trust for the payment of the bonds as are herein provided.

ARTICLE 6.

Assessments.

SECTION 1. Upon notice and satisfactory proof of a death of a member, (should it be necessary to make an assessment), the company, or such person as the board may direct, shall send by mail, to the last recorded post-office address of every member, a notice containing the name and residence of the deceased member and the amount due from the member to whom said notice is sent. The party sending

such notice may employ a suitable person, persons or corporation in any town or city who may act in serving such notices either personally or by mail. A notice so sent or served shall be deemed and taken to be a lawful and sufficient notice for the payment of the assessment required.

SECTION 2. Should any one fail to forward, as indicated in the notice, the amount thus due, for a period of ten (10) days after the date of said notice, he shall forfeit his membership and all benefits arising therefrom. Any one having thus forfeited his membership may be reinstated, he being alive, within thirty (30) days after the date of said notice, by the payment of all arrearages and may be reinstated to membership subsequent to the thirty (30) days upon such terms as the board of directors may fix.

SECTION 3. Any member may make a deposit in advance for the payment of his assessments which money shall be used for no other purpose by the company and in case of the member's death before it is so needed the unused balance shall be paid back with the policy.

21 ARTICLE 7.

Benefits.

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall within sixty (60) days pay the widow, children or heirs of the deceased member, (and in the order named unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership: Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment; provided it shall not exceed $5,000 and all the money paid on the policy in assessments; and a certificate for $1,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $1,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates.

SECTION 2. At the end of each ten years' continuous membership, such members shall receive a bond bearing 3% annual interest for such a proportion of the surplus on the first day of the month nearest preceding, as all the money paid during the ten years by him on his existing policy bears to the entire amount of money received by the company during the same period.

SECTION 3. Any such bond can be used (as) par, and accrued interest at any time, without notice, in payments of assessments, and no bond shall run longer than the life of the member; but if unused, shall be payable with his policy at death.

SECTION 4. At the end of each five years' continuous membership, the company will, on the return of the policy, to the home office and the payment of twenty-five cents, endorse on it the amount of assessments paid; which amount is payable at death on the same conditions as the policy itself.

SECTION 5. Any member desiring to withdraw, shall be furnished

under the seal of the company, an honorable withdrawal card, upon payment of all dues and assessments legally charged to him, and the surrender of his policy with all interest therein.

SECTION 6. Any member having designated his beneficiary or beneficiaries may change the same at his pleasure, without notice to or consent of the beneficiary or beneficiaries and all accepting any interest in this policy or company do so upon these express terms.

22 ARTICLE 8.

Miscellaneous.

SECTION 1. Any member who shall impair his health by the habitual use of intoxicating drinks, or opium, shall upon proof of the fact to the satisfaction of the board of directors forfeit all claim upon the company and be dropped from the roll of its members.

SECTION 2. To avoid lawsuits, and yet insure the ends of justice, it is expressly stipulated that all disputes arising between the company and its members shall be settled by arbitration, and in the manner following, to wit: The company shall select one man, the aggrieved claimant one man, or in case either party shall neglect or refuse to appoint an arbitrator for a period of thirty days after due notice that an arbitration is desired, then in this case the party desiring to arbitrate having selected an arbitrator, may apply to any judge of any court of record in the United States, who shall have power to appoint the necessary referee, and the two thus appointed shall select the third party who shall constitute an authoritative commission to hear and determine the case, and their decision shall be binding and final in all cases, and such decision may be entered as a judgment in any court of record in the county where the home office is located.

SECTION 3. This constitution may be amended at any regular meeting of this company by three-fourths of those voting:

Provided, that all proposed amendments shall first be submitted in writing to the board of directors, at a regular meeting and if five (5) directors approve the said amendments then the board shall require a notice of the proposed change to be given to all the members of the company at least thirty (30) days before the time of said meeting. Every member shall have the right to vote upon proposed amendments, on the condition and in the manner prescribed for the election of members of the board of directors.

SECTION 4. The board of directors shall have power to make by-laws and regulations for the conduct of the business of this company, not inconsistent with the provisions of this constitution.

Policy No. 861. Knights Templars and Masons' Life Indemnity Company. Name, John P. Jarman. Amount limited to $5,000, and all money paid in assessments. Total first payment, $12.00 including medical examination. For assessments and dues see article 4, sections 4 and 5 of the constitution.

23 Indorsed on back:

I desire this policy to be made payable to my wife, Rosa B. Jarman. Jno. P. Jarman. Jun- 25, '92.

Exhibit "B."

(Takes place of "B" and "C.")

Exhibit D.

Constitution of the Knights Templars and Masons' Life Indemnity Co.

Article 1, section 1, remains unchanged.

Article I.

Name and Object.

Section 1. This company shall be known as the Knights Templars and Masons' Life Indemnity Company.

Section 2. Originally as follows: The object of this company shall be to furnish life indemnity, or pecuniary benefits to the widows, orphans, heirs, relatives, devisees or legatees of deceased members, according to the regulations and provisions hereinafter specified.

Sec. 2. Amended January 14, 1896 (Record p. 303) so as to read as follows:

Section 2. The object of this company shall be to furnish life indemnity or pecuniary benefits to the widows, orphans, heirs relatives, devisees or legatees of deceased members, or to members physically disabled, totally and permanently, according to the regulations and provisions hereinafter specified.

The following sections from form No. 2 have remained the same up to date, except as noted:

Section 3. The principal office of the company shall be at Chicago, Illinois, but the board may establish branch offices elsewhere.

Article II.

Officers and Directors.

Section 1. The officers of this company shall be a president, vice-president, second vice-president, and medical director, to be chosen annually by the board of directors.

Sec. 2. The affairs of the corporation shall be managed by not less than five nor more than nine directors, who shall be elected from and by the members, provided that, as near as practicable, an equal number shall be elected each year for a
24 period not to exceed three years. Vacancies occurring in the board shall be filled by the majority vote of all the directors.

Sec. 3. At the election of directors and on all questions coming properly before the company, every member shall have the right to one vote, either in person or by proxy, for every full one thousand dollars mentioned in his policy, at the time of its issue.

ARTICLE III.

Duties and Powers of Directors.

SECTION 1. It shall be the duty of the board of directors to hold in trust the property and assets of this company in accordance with the provisions of this constitution and the by-laws adopted in pursuance thereof.

SEC. 2. The board of directors shall have power to employ any agent, agents or other service, for such time and on such terms and with such powers as in their judgment will best promote and conserve the interests of the company.

SEC. 3. They shall have power to remove any officer for inefficiency or malfeasance in office at any regular meeting of the board of directors, two-thirds of all the directors voting for such removal; provided the accused shall have thirty days' previous notice of the charges and specification, and shall have the right of self-defense before the board of directors, in person or by counsel. But before the trial of such charges, a majority of all the board of directors may suspend an officer from his office until such trial can be had.

SEC. 4. The board of directors shall select a suitable depository for the funds of the company, which shall be considered safe by the general public. All the moneys deposited therein shall be withdrawn only on the check of the president of the company, and countersigned by at least one other director. In case of the absence or inability of the president to act, the first or second vice-president may act in his stead.

SEC. 5. The board of directors shall have full charge of all matters not herein provided for, and shall fix the time of the annual meeting of the company.

ARTICLE IV.

SECTION 1. When an applicant has complied with the constitution and by-laws and been accepted, the board of directors shall make over to him through officers of the company, a policy of membership, stating the terms and conditions of the contract between the parties, which policy shall be sufficient evidence of his membership at the time it was issued, and shall constitute the basis of settlement with the beneficiaries, but no person shall be entitled to the benefits of this company until such certificate is issued and delivered.

Article IV, section 3, originally as follows:

SECTION 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars, and all the money paid in assessments upon the policy, but no member shall hold more than one policy at the same time. Any holder of a policy may change the amount of his benefit from a lower to a higher amount by the surrender of his policy, furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director, and paying the sum of five dollars, and may change from a higher to a

lower amount by paying two dollars and surrendering the original policy.

Article IV, sec. 3, amended Jan. 8, 1889 (see Record p. 121) the words underscored were inserted:

SEC. 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars, and all the money paid in assessments upon the policy for the first five years, but no member shall hold more than one policy at the same time. Any holder of a policy may change the amount of his benefit from a lower to a higher amount by the surrender of his policy, furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director, and paying the sum of five dollars; and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

Article IV, sec. 3, amended January 13, 1891, (see Record, p. 176), by inserting the words "except one additional policy on the term plan, as provided in article VIII, sec. 2," underscored.

SEC. 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars, and all the money paid in assessments upon the policy for the first five years, but no member shall hold more than one policy at the same time except one additional policy on the term plan, as provided in article VIII, section 2. Any holder of a policy may change the amount of his benefit from a lower to a higher amount by the surrender of his policy, furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of
26 the medical director, and paying the sum of five dollars and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

Article IV, sec. 3, amended January 14, 1896, (see Record p. 304), by striking out the words, "and all the money paid in assessments upon the policy for the first five years" underscored above, leaving the section as follows:

SECTION 3. Policies of membership may be issued upon a basis of benefits ranking in amounts to five thousand dollars, but no member shall hold more than one policy at the same time, except one additional policy on the term plan, as provided in article VIII, sec. 2. Any holder of a policy may change the amount of his benefit from a lower to a higher amount by the surrender of his policy, furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director, and paying the sum of five dollars; and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

Article IV, sec. 4, originally as follows:

SEC. 4. Upon the death of any member an assessment, increasing with age, shall be made upon the surviving members, (provided an assessment is needed), according to the following table of rates.

Said table is drawn for $1,000 which shall be the unit in determining all other amounts:

Table of Rates—Assessments for $1,000.

Years, of age, inclusive			21 to 30	$0.50
"	"	"	31 to 35	.60
"	"	"	36 to 40	.65
"	"	"	41 to 45	.80
"	"	"	46 to 50	.95
"	"	"	51 to 55	1.20
"	"	"	56 to 60	1.50
"	"	"	61 to 65	2.00
"	"	"	(65) and upwards	2.55

But no assessment shall be made so long as the money in the death fund will pay the maximum loss in full.

Article IV, sec. 4, amended February 20, 1894 (see Record p. 252) by adding words underscored:

SEC. 4. Upon the death of any member an assessment, increasing with age, shall be made upon the surviving members, (provided an assessment is needed), according to the following table of
27 rates for an amount sufficient to comply with the laws of the State of Illinois; said table is drawn for $1,000 which shall be the unit in determining all other amounts.

Table of Rates—Assessments for $1,000.

Years, of age, inclusive			21 to 30	$0.50
"	"	"	31 to 35	.60
"	"	"	36 to 40	.65
"	"	"	41 to 45	.80
"	"	"	46 to 50	.95
"	"	"	51 to 55	1.20
"	"	"	56 to 60	1.50
"	"	"	61 to 65	2.00
"	"	"	66 and upwards	2.55

But no assessments shall be made for less than the above table of rates, nor so long as the money in the death fund will pay the maximum loss in full.

SEC. 5. There shall be an annual due of one dollar per one thousand dollars on the face of the policy, payable on or within ten days after each anniversary of the policy, and a failure to pay said due shall work a forfeiture of the policy the same as an unpaid assessment.

Article IV, sec. 6, created and added February 20, 1894 as follows:

SEC. 6. Policy-holders of this company will be required to pay with and in addition to annual dues, their *pro rata* amount of such additional sum as may be required to meet any tax that may be imposed upon the company by the laws of the State in which the assured member resides, and a failure to pay said amount shall work a forfeiture of the policy the same as an unpaid assessment.

ARTICLE V.

Sections 1 and 2 were originally as follows:

SECTION 1. Seventy-five per cent of all the moneys arising or accruing from assessments shall be placed to the credit of the death fund, which fund shall be used for no other purpose than the payment of death losses.

SEC. 2. All other moneys shall be placed in a contingent fund, out of which the expenses and emergencies are to be met, and all the remainder or surplus shall be invested in some reliable trust for the payment of the bonds, as are herein provided.

28 Article V, sections 1 and 2 were amended January 14, 1896, (see Record p. 304) so as to read as follows, parts affected inked:

SECTION 1. Seventy-five per cent of all moneys arising or accruing from assessments shall be placed to the credit of the death fund, which fund shall be used for no other purpose than the payment of death losses and disability claims.

SEC. 2. All other moneys shall be placed in a contingent fund, out of which the expenses and emergencies are to be met, and all the remainder, or surplus, shall be invested by the company in reliable securities, from which the bonds provided for in article VII, sec. 2 shall be paid.

ARTICLE VI.

Section 1, originally as follows:

Assessments.

SECTION 1. Upon notice and satisfactory proof of the death of a member, (should it be necessary to make an assessment) the company, or such person as the board may direct, shall send by mail to the last recorded post-office address of every member, a notice containing the name and residence of the deceased member, and the amount due from the member to whom said notice is sent. The party sending such notice may employ a suitable person, persons, or corporation in any town or city who may act in serving such notice, either personally or by mail. A notice so sent or served shall be deemed and taken as a lawful and sufficient notice for the payment of the assessment required.

Article VI, sec. 1, amended January 14, 1896, so as to read as follows:

Assessments.

SECTION 1. Upon notice and satisfactory proof of the death of a member (should it be necessary to make an assessment) the company or such other person as the board may direct, shall send, postage prepaid by the United States mail, to the last recorded post-office address of every member, a notice containing the name and residence of the deceased member, and the amount due from the

member to whom said notice is sent. A notice so sent shall be deemed and taken (—) a lawful and sufficient notice for the payment of the assessment required.

29 Article VI, sec. 2, originally as follows:

SEC. 2. Should any one fail to forward, as indicated in the notice, the amount thus due for a period of ten (10) days after the date of said notice, he shall forfeit his membership and all benefits arising therefrom. Any one having thus forfeited his membership may be reinstated, he being alive, within thirty (30) days after the date of said notice, by the payment of all arrearages, and may be reinstated to the membership subsequent to the thirty days upon such terms as the board of directors may fix.

Article VI, sec. 2, amended January 14, 1896, so as to read as follows: Parts affected underscored. (See Record, p. 304, 305.) It appears that the words erased were not a part of the amendment, and should be omitted.

SEC. 2. Should any member fail to pay or to forward, as indicated in the notice, the amount thus due for a period of ten (10) days after the depositing of said notice in the United States post-office or mail box in the city of Chicago, such failure to so pay or forward the amount due shall thereby and *ipso facto*, work a forfeiture and termination of his membership and all benefits arising therefrom.

Any one whose membership has thus become forfeited and terminated, may be reinstated, he being alive, within thirty (30) days after the mailing of said notice aforesaid, by the payment of all arrearages at the office of the company in Chicago.

Article VI, section 3, originally as follows:

SECTION 3. Any member may make a deposit in advance for the payment of his assessments, which money shall be used for no other purpose by the company, and in case of the member's death before it is so needed, the unused balance shall be paid back with the policy.

Same amended January 14, 1896, so as to read as follows:

SECTION 3. Any member may make a deposit in advance for the payment of his assessments and dues, which money shall be used for no other purpose by the company, and in case of the member's death before it is so needed, the unpaid balance shall be paid back with the policy.

ARTICLE VII.

Article VII, sec. 1, originally as follows:

Benefits.

SECTION 1. Upon due notice and satisfactory proof of a death of a member of this company the board of directors shall,
30 within sixty (60) days, pay the widow, children or heirs of the deceased member (and in the order named unless otherwise ordered by the member during his lifetime or in his will) the amount set forth in the deceased member's policy of membership.

Provided, that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment providing it shall not exceed $5,000, and all the money paid on the policy in assessments; and a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates.

Same amended January 8, 1889 (see Record, p. 121), by inserting words underscored below:

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall, within sixty (60) days pay the widow, children, or heirs of the deceased member and in the order named (unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership.

Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment, provided it shall not exceed $5,000 and all the money paid on the policy in assessments for the first five years, and a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the moneys paid on the policy in assessments for the first five years, and so on in the same proportion as to all certificates.

Same amended February 20, 1894, by striking out the proviso. (See Record p. 253.)

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall, within sixty (60) days, pay the widow, children or heirs of the deceased member (and in the order named, unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership.

Article VII, section 2, originally as follows:

SEC. 2. At the end of each ten years' continuous membership, such members shall receive a bond, bearing three per cent. annual interest, for such a proportion of the surplus on the first day
31 of the month nearest preceding, as all the money paid during the ten years by him on his existing policy bears to the entire amount of money received by the company during the same period.

Same amended February 20, 1894 (see Record p. 253) by inserting proviso below:

SEC. 2. At the end of each ten years' continuous membership, such members shall receive a bond bearing 3 per cent. annual interest for such a proportion of the surplus on the first day of the month nearest preceding as all the money paid during the ten years by him on his existing policy bears to the entire amount of money received by the company during the same period.

Provided, that no such bond shall be issued as a dividend except

when the surplus of the reserve or emergency fund is in excess of one hundred thousand dollars.

Article VII, sec. 3, originally as follows:

SEC. 3. Any such bond can be used at par, and accrued interest at any time, without notice, in payments of assessments, and no bond shall run longer than the life of the member; but if unused shall be payable with his policy at death.

Article VII, sec. 4, originally as follows:

SECTION 4. At the end of each five years' continuous membership, the company will, on return of the policy to the home office and the payment of twenty-five cents, endorse on it the amount of assessments paid; which amount is payable at death on the same condition as the policy itself.

Same amended January 8, 1899 (Record p. 121) by substituting "first" for "each."

SEC. 4. At the end of the first five years' continuous membership, the company will, on return of the policy to the home office and the payment of twenty-five cents, endorse on it the amount of the assessments paid; which amount is payable at death on the same conditions as the policy itself.

Article VII, section 4, was repealed January 14, 1896, and the following section was adopted: (See Record p. 303.)

SEC. 4. In event of any member becoming physically disabled, totally and permanently, and upon the determining of such disability by the board of directors or finance committee of this association, there shall be paid to said member upon the receipt and surrender of his policy, in full discharge of all claims, such a part of the face value thereof, as may be agreed upon between the parties to the contract, provided the member shall so request in writing while his policy is in full force, subject to all the conditions
32 and agreements contained therein. The moneys so paid for disability claims are to be taken from and charged to the "death fund."

Article VII, sections 5 and 6 remain unchanged as follows:

SEC. 5. Any member desiring to withdraw shall be furnished under the seal of the company, an honorable withdrawal card, upon payment of all dues and assessments legally charged to him, and the surrender of his policy with all interest therein.

SEC. 6. Any member having designated his beneficiary or beneficiaries may change the same at his pleasure, without notice to or consent of the beneficiary or beneficiaries, and all accepting any interest in this policy of company do so upon these express terms.

ARTICLE VIII.

Article (*VII*), section 1, originally as follows:

Miscellaneous.

SECTION 1. Any member who shall impair his health by the habitual use of intoxicating drinks or opium, shall, upon proof of

the fact to the satisfaction of the board of directors, forfeit all claim upon the company and be dropped from the roll of its members.

Same amended February 20, 1894 (Record p. 252) so as to read as follows:

SECTION 1. Any member who impairs his health by the habitual use of intoxicating drinks, opium or other deleterious drug or substance, or engages in the retail sale of intoxicating liquors, thereby invalidates his policy, and forfeits all claim upon the—

Article VIII, sec. 2, was originally as follows:

SEC. 2. To avoid lawsuits, and yet insure the ends of justice, it is expressly stipulated that all disputes arising between the company and its members shall be settled by arbitration, and in the manner following, to wit: The company shall select one man, the aggrieved claimant one man, or in case either party shall neglect or refuse to appoint an arbitrator for a period of thirty (30) days, after due notice that an arbitration is desired, then in this case the party desiring to arbitrate may apply to any judge of any court of record in the United States, who shall have power to appoint the necessary referee, and the two thus appointed shall select a third party, who shall constitute an authoritative commission to hear and determine the
33 case, and their decision shall be binding and final in all cases, and such decision may be entered as a judgment in any court of record in the (country) where the home office is located.

Article VIII, sec. 2, was repealed January 13, 1891 (Record p. 176) and the following section was adopted:

SEC. 2. The board of directors shall have power to issue limited-term policies of insurance, such limited term not to exceed five years, on such conditions as the board of directors shall deem for the best interests of the company; provided that no one member shall hold more than one policy on the life term, nor for a larger amount than is provided for in article IV, section 3; and provided further, that *on* one member shall hold a larger sum of insurance than ten thousand dollars in the aggregate, nor more than two policies—one of which may be on the life plan, and the other on the limited-term plan.

Article VIII, section- 3 and 4 remain unchanged as follows:

SEC. 2. This constitution may be amended at any regular meeting of this company by three-fourths (¾) of those voting:

Provided, that all proposed amendments shall first be submitted in writing to the board of directors at a regular meeting; and if five (5) directors approve the said amendments, then the board shall require a notice of the proposed change to be given to all the members of the company at least thirty (30) days before the time of said meeting. Every member shall have the right to vote upon the proposed amendments, on the condition and in the manner prescribed for the election of members of the board of directors.

SEC. 4. The board of directors shall have the power to make by-laws and regulations for the conduct of the business of this company, not inconsistent with the provisions of this constitution.

EXHIBIT E.

Showing certain statistics in the history of the Knights Templars and Masons' Life Indemnity Company.

	Death losses paid up to January 1, 1898, amounted to	$2,573,599.
	Total amount of money paid in assessments by the deceased members	245,411.
	Amount in addition which must have been paid if the plan of returning all money paid in assessments had been continued	148,089.
	Average membership during past ten years	7,193.
	Average amount received in death fund from one assessment	18,116.
34	Total membership January 1, 1889	5,260.
	Number of these deceased Jan. 1, 1898	441
	Number of these surrendered or forfeited	2,695
	Money paid in assessments by deceased members of class of 5,260 after first five years up to Jan. 1, 1898	91,211.
	Amount paid in assessments after first five years by one Terwilliger of this class holding $5,000, who died in 1898	1,137.50
	Average amount of insurance in force during past eight years	25,000,000.00
	Amount paid for death losses from the death fund to Jan. 1st, 1898	2,489,836.
	Amount contributed to the death fund by the members whose beneficiaries received this	184,058.
	Amount contributed by them to the contingent fund	49,648.
	Bond of John P. Jarman, issued Oct. 23, 1895, being 8.5 per cent. of the amount paid by him	47.85
	Total receipts of the company at last date	2,630,733
	Surplus fund at last date	224,772.
	Amount paid by Jarman	562.83
	Amount of bond	47.85
	Amount of bond if no money had in assessments had been returned	61.91
	Difference of cost of carrying $192 of insurance for five years and a less amount for first five years	14.06

Cost of same by assessing on Jarman's policy each month for the actual amount in force, showing the computation necessary for each assessment to carry the increased amount of insurance:

No. of ass't.	Additional insurance.	Rate per $1,000 age 41-45.	Amount.	Total.
4	4.00	.80	.0032	
5	8.00	.80	.0064	.0096
6	12.00	.80	.0096	.0192
7	16.00	.80	.0128	.0320
8	20.00	.80	.0160	.0480
9	24.00	.80	.0192	.0672
10	28.00	.80	.0224	.0896
11	32.00	.80	.0256	.1152
12	36.00	.80	.0288	.1440

and so on to ass't No. 50 made Sept. 20th, 1890, or applying the formula for the sum of the terms of an arithmetical progression we have:

The first term a equals .0032.

35 The last term, 1, $192 x .80 divided by 1,000 equals .1536.

The number of terms or assessments is 47.

The sum of the terms S equals (.0032 x 1536) 23.5 equals 3.68.

Additional insurance.	Rate per $1,000.	Rate.	Ass'ts.	
1890–1895.		$192		
$192	.95	.1824	71 equals.....	$12.95

Total cost of increased insurance at regular rates..... 16.63

The average percentage of money returned in the form of a bond for succeeding years has been as follows:

May to December,	1894.....	9.6 per cent.
All of	1895.....	9.1
All of	1896.....	9.4 per cent.
All of	1897.....	9.4 per cent.

The total membership January 1, 1896, was 7,509.

Largest amount contributed by any deceased member was $1,732.75.

His beneficiaries received 5,202.75.

Statistics Relating to the Financial History of the Knights Templars and Masons' Life Indemnity Company.

Exhibit E.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Year of—	No. of members.	No. of ass'm'ts.	Average age.	Death fund annual additions.	Death losses annual.	Death losses total.	Death fund balance or deficit.	Contingent fund annual.	Expense annual.	Balance or surplus fund.	Ass'm'ts returned annual.	Per cent. annual death losses.	Ass'm'ts returned total.	Per cent. total death loss.	Death fund balance or deficit if no ass'm'ts returned.
1885.....	1003	2	45.47	$3,070	$441	$441	$2,628	$9,034	8,540	1,669					
1886.....	2365	8	45.08	32,548	27,422	27,863	7,754	31,383	28,420	4,632					
1887.....	3976	10	44.49	78,210	69,745	97,609	16,196	53,493	42,371	15,084	$489	0.7	$489	0.5	$16,682
1888.....	5260	10	44.55	112,363	103,970	201,579	24,578	70,647	53,635	31,596	1,391	1.3	1,880	0.9	26,458
1889.....	6123	11	44.70	156,799	159,771	361,350	21,616	87,913	57,652	63,016	4,371	2.7	6,252	1.7	27,868
1890.....	6541	11	45.09	176,065	187,871	549,222	9,810	92,392	51,200	105,545	9,224	4.9	15,477	2.8	25,287
1891.....	7265	12	44.98	209,074	243,839	793,061	—24,954	108,965	58,677	134,566	8,673	3.6	24,150	3.0	—804
1892.....	7330	15	45.25	270,131	297,561	1,090,622	—52,383	131,237	61,433	178,876	11,579	3.9	35,729	3.3	—16,654
1893.....	7333	15	45.43	279,001	291,454	1,382,077	—64,837	133,792	59,301	242,411	12,154	4.2	47,874	3.5	—16,963
1894.....	7255	15	45.86	272,795	291,642	1,673,720	—83,684	136,507	68,828	294,888	12,559	4.3	60,434	3.7	—23,250
1895.....	7509	15	46.28	282,202	319,233	1,922,954	—120,716	139,611	75,713	325,763	14,332	4.5	74,766	3.8	—45,950
1896.....	7472	16	46.57	307,224	304,108	2,297,062	—117,599	157,861	105,976	391,508					
1897.....	7847	16	46.62	310,362	276,537	2,573,599	—83,873	164,597	135,241	466,692					
1898.....	7253	18	47.01	345,070	461,736	3,035,336	—200,440	177,386	167,827	332,528					

37 Thereafter, to wit, on the 31st day of May, 1899, the following entry appears of record in the above-entitled case:

ROSA B. JARMAN
against
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY CO. } 2311.

This day come the parties by their attorneys, the plaintiff by E. M. Harber and the defendant by Samuel B. Huston, Alex. B. Huston and Hervey B. Hicks, and this case coming on for final hearing a trial by jury having been duly waived by written stipulation of parties filed herein, the hearing is proceeded with before the court without the intervention of a jury, and is submitted to the court on the agreed statement of facts, and exhibits thereto attached and briefs of counsel.

Thereafter, to wit, on Monday, the 26th day of June, 1899, the same being a day of the regular April term of said court, the following judgment entry appears of record in the above-entitled case:

ROSA B. JARMAN
against
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois. } 2311.

This case having heretofore come on for final hearing, a jury having been duly waived by a stipulation in writing filed herein, on the agreed statement of facts, and the exhibits thereto attached, the court declares the law to be:

(1st.) That the contract of insurance in question was and is subject to the provisions of section 5855 of the Revised Statutes of Missouri of 1889, which was section 5982 of the Revised Statutes of 1879, in force at the time of the issue of the policy in question, and that said contract was not, and is not, affected by either of the amendments of the constitution of the defendant company, as shown in Exhibit "D" to the agreed statement of facts; and that the plaintiff is entitled to recover judgment against the defendant for the sum of five thousand dollars ($5,000.00) the amount of the certificate of membership; and eight hundred and eleven dollars and eighty-three cents ($811.83) the amount of the assessments paid into the company by the assured, making in the aggregate the sum of $5,811.83, and interest thereon from November 28, 1898, at the rate of six per cent. per annum; and

(2nd.) That the plaintiff is not entitled to have added thereto ten per cent. damages under the provisions of section 5927 of the Revised Statutes of Missouri 1889.

38 It is therefore considered, ordered and adjudged by the court, that the plaintiff, Rosa B. Jarman, recover of the defendant, Knights Templars and Masons' Life Indemnity Company of Illinois, said sum of six thousand and thirteen dollars and thirty cents ($6,013.30) so found to be due, together with her costs herein laid out and expended and have thereof execution.

Thereafter, to wit, on the 1st day of July, A. D. 1899, the following entry appears of record in the above-entitled case:

ROSA B. JARMAN
against
KNIGHTS TEMPLARS & MASONS' L. I. CO. } 2341.

Ordered that the defendant herein be granted sixty days from this date within which to file its bill of exceptions.

Thereafter, to wit, on the 25th day of August, A. D. 1899, defendant filed its assignments of error and petition for writ of error, which said assignment- of error are in words and figures as follows:

In the Circuit Court of the United States in and for the Western District of Missouri, at Kansas City, Mo.

ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHTS TEMPLAR AND MASONS' LIFE INDEMNITY CO., Defendant.

Comes now the said defendant and humbly complaining shows to the court; that in the record and proceedings in the above-entitled cause, and in the ruling, findings, declarations of law and judgment therein, the court committed manifest error and this defendant assigns the following error-, to wit:

First. That the court erred in declaring the law to be that the contract of insurance in question was and is subject to the provisions of section 5855 of the Revised Statutes of Missouri of 1889, which was section 5982 of the Revised Statutes of 1879, in force at the time of the issue of the policy in question.

Second. That the court erred in finding for the plaintiff for the reason that under the law pleadings and agreed statement of facts—that is, under all the evidence—the findings should have been for the defendant.

Third. That the said court erred in finding for the plaintiff under the law and the evidence.

Fourth. That the said court erred in declaring the law to be "that said contract was not, and is not, affected by either of
39 the amendments to the constitution of the defendant as shown in Exhibit 'B' of the agreed statement of facts." And erred in adjudging accordingly.

Fifth. That the said court erred in finding "that the plaintiff is entitled to recover judgment against the defendant for the sum of five thousand dollars, the amount of the certificate of membership and eight hundred and eleven dollars and eighty-three cents, the amount of the assessments paid to the company by the insured, making in the aggregate the sum of five thousand, eight hundred and eleven dollars and thirty-three cents, and interest thereon from November 28th, 1898, at the rate of six per cent. per annum."

Sixth. That the said court erred in finding and adjudging "that

the plaintiff was entitled to recover, and adjudging a recovery accordingly of the defendant, the sum of six thousand and thirteen dollars and thirty cents, together with her costs herein laid out and expended."

Seventh. That the said court erred in that it did not find under the law and all of the evidence, that the contract of insurance in question is not subject to the provisions of section 5855 of the Revised Statutes of Missouri of 1889 and in not finding that the defendant company was relieved from the payment of the policy in question by the self-destruction of John B. Jarman, except as provided in said policy, and in not confining a recovery to that provided in the policy in case of the self-destruction of the said John P. Jarman, as provided in the policy.

Eighth. That the court erred in finding, holding and adjudging that the contract in question is not affected by the amendments to the constitution of the defendant company, made January 8th, 1889.

Ninth. That the said court erred in finding and adjudging that the contract in question was not affected by the amendments to the constitution of the defendant company, made January 14th, 1896.

Tenth. That under the agreed statements of facts the court erred in finding and rendering judgment for the plaintiff in the sum found, or for any amount whatever, and because that under the evidence the finding should have been for the defendant.

Wherefore, because of the said errors herein assigned the said defendant by its attorneys prays that the said judgment rendered against it may be reversed, annulled and for naught held, and that it be restored to all things which it hath lost by reason of said judgment.

HERVEY B. HICKS,
SAML P. HUSTON,
Attorneys for Defendant.

Said petition for writ of error is in words and figures as follows, to wit:

ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHTS TEMPLAR AND MASONS' LIFE INDEMNITY CO., Defendant.

To the hon. the circuit court of the United States in and for the western district of Missouri, at Kansas City, and to Honorable John S. Philips, district judge, holding said court:

Now come the said defendant in the above entitled cause, and respectfully petitions by and through Hervey B. Hicks and Samuel P. Huston, its attorneys of record in said cause, and prays a writ of error in said cause; and it further prays that the supersedeas bond herewith presented may be approved, and also prays that a citation issue, directed to the plaintiff aforesaid, in the usual form, and to

allow said writ of error as prayed, and the said defendant herewith presents with this petition for said writ of error, its assignments of error, and prayer for reversal of the judgment rendered in said cause.

HERVEY B. HICKS,
SAML. P. HUSTON,
Attorneys for Defendant.

Thereafter, to wit, on the 28th day of August, 1899, the defendant filed its bill of exceptions in the above-entitled cause, which said bill of exceptions is in words and figures as follows, to wit:

Circuit Court of the United States, Western Division of Western District of Missouri.

ROSA B. JARMAN
vs.
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois, a Corporation, Defendant.

Bill of Exceptions.

Be it remembered that afterward, to wit, on the 31st day of May, A. D. 1899, at a stated term of said court, begun and held in Kansas City, Missouri, in and for said district, before his honor Judge Philips, district judge, transacting the business of the circuit
41 court, the above case came on to be tried before the said judge, without the intervention of a jury, the parties aforesaid by their counsel, having, according to the statute in such case made and provided, waived a jury, plaintiff being represented by E. M. Harber, Esq., her attorney, and the defendant by Hervey B. Hicks, Esq., its attorney, and S. P. Huston, of counsel, and thereupon the parties submitted the case to the said judge upon the following agreed statement of facts and exhibits, attached thereto or made a part thereof.

* * * * * * *

(Agreed statement of facts appears on page 4 of this record.)

* * * * * * *

(Exhibit A appears at page 8 of this printed record.)

* * * * * * *

(Exhibit B appears at page 14 of this printed record.)

* * * * * * *

(Exhibit D appears at page 23 of this printed record.)

* * * * * * *

(Exhibit E appears at page 33 of this printed record.)

* * * * * * *

The act of Illinois under which the defendant company was organized, entitled

An act to provide for the organization and management of corporations, associations, or societies for the purpose of furnishing life indemnity or pecuniary benefits to the widows, orphans, heirs, relatives and devisees of deceased members, or accident or permanent disability indemnity to members thereof. Approved June 18, 1883. In force July 1, 1883.

1. Organization. Purposes of corporation.—1. Be it enacted by the people of the State of Illinois, represented in the General Assembly: That corporations, associations or societies for the purpose of furnishing life indemnity or pecuniary benefits to the widows, orphans, heirs or relatives by consanguinity or affinity devisees or legatees of deceased members, or accident or permanent disability indemnity to members thereof, and where members shall receive no money as profit and where the funds for the payment of such benefits shall be secured in whole or in part by assessment upon the surviving members, may be organized subject to the conditions, hereinafter provided.

42 2. Who may incorporate.—Statement to be made.—2. Any five or more persons, citizens of the United States, a majority of whom shall be *bona fide* citizens and voters of this State, may associate themselves together as a body corporate, for which purpose they shall make, sign and acknowledge, before any officer authorized to take acknowledgments of deeds in this State, a certificate of association, in which shall be stated the name or title by which such corporation, association or society shall be known in law; the location of its principal office which office must be located in this State; the name and residence of the incorporators; the object of the corporation, with its plan of doing business, clearly and fully defined; the number of its directors, trustees or managers, and the names of those selected to serve until its first annual meeting; the limits as to age of applicants for membership, and whether medical examinations are required; and that *bona fide* applications have been secured for at least two hundred thousand dollars by not less than two hundred persons, which certificate of association shall be submitted to the auditor of public accounts, who shall carefully examine the same; and if he shall find that the objects and purposes are fully and definitely set forth, and are clearly within the provisions of this act, and that the name or title is not the same or does not so closely resemble a title in use as to have a tendency to mislead the public, shall approve the same. If, for either of the aforesaid, or other good and sufficient reason, the said auditor shall be unwilling to approve the certificate of association, he shall immediately inform the incorporators of the fact, stating his objections fully in writing. If the certificate is sufficiently satisfactory, the said auditor shall indicate his approval thereof under his hands and official seal, and shall forthwith file the same, together with certificate of association and other papers accompanying it, in the office of the secretary of state.

3. Certificate of organization.—3. Upon the filing of the papers as aforesaid, the secretary of state shall issue a certificate of organ-

ization of the corporation, association or society, making as a part thereof a copy of all papers filed in his office in and about the organization thereof, and duly authenticated under his hand and seal of the State; and the same shall be recorded in the book for that purpose in the office of the recorder of deeds of the county in which the principal place of business of such corporations, association or society is located.

4. Organization—By-laws—Directors—powers of.—4. A corporation, association or (societies) organized under the provisions of this act shall be a body corporate and politic, by the name stated
43 in the certificate of organization, and by that name, they and their successors may have succession, and shall be persons in law capable of suing and being sued; and may have power to make and enforce contracts in relation to the legitimate business of their corporation association or society; may have and use a common seal, and may change or alter the same at pleasure, and they and their successors in their corporate name shall in law be capable of taking, purchasing, holding and disposing of real and personal estate for the purpose of their association or society; may make by-laws not inconsistent with the constitution and laws of this State, or of the United States; which by-laws shall define the manner and form of electing directors, trustees or managers and officers of the corporation, association or society, and the qualifications and duties of the same with terms of office not exceeding three years; and also the qualifications and privileges of the members thereof.

5. Number and election of directors.—5. The affairs of all corporations, associations or societies organized or doing business under the provisions of this act, shall be managed by not less than five directors, trustees or managers, a majority of whom shall be residents of the State of Illinois, who shall be elected from and by the members at such time and place, and for such period, not exceeding three years, as may be provided for in the by-laws, and may be eligible for re-election provided, that as near as practicable, an equal number shall be elected each year. Whenever directors, trustees or managers shall be elected, a certificate under the seal of the corporation, giving the name and residence of those elected, and the term of their office, shall be recorded in the office of the recorder of deeds where the certificate of organization is recorded. Vacancies in the board of directors, trustees or managers, shall be filled in the manner provided in the by-laws and upon filling any vacancy a like certificate shall be recorded.

6. Assessment notices.—6. Assessment notices sent to members by any association or corporation doing business under the provisions of this act, shall state the object or objects for which the money to be collected is intended, and no part of the funds collected for the payment of death benefits shall be applied for any other purpose.

7. Certificate of membership—Fraud—Penalty.—7. Any agent, physician or other person who shall knowingly secure or cause to be secured a certificate of membership on any person without his knowledge or consent, or by means of misrepresentation, false, fraudulent or untrue statements, be instrumental in securing a cer-

tificate of membership on any aged or infirm person, or in
44 restoring to membership any person not in an insurable condition, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum not less than $100 nor more than $1,000 or imprisoned in the county jail not less than thirty days or more than one year, or both, in the discretion of the court; and said certificate or renewal, so secured, shall be absolutely void.

8. By-laws—Surplus fund—Investment—Increase—Use of.—8. All corporations, associations or societies transacting business under the provisions of this act, may provide by by-laws for the accumulation of a surplus, general or guarantee fund, which may be invested only in the corporate name of the association or society, in the United States, State, county, city or other first-class convertible bonds or stocks upon which interest has not been in default. Such funds, when so set apart and so invested, shall with the increase thereof, belong to such corporations, associations or societies and not to the directors, trustees, managers or officers thereof; and shall be used only for mortuary benefits, without assessment, or applied in payment of the future assessments or otherwise used for the promotion of the object or objects for which said funds are specially provided and set apart, and such use shall not be deemed or construed to mean a profit received by members within the meaning of the statutes of this State.

9. Corporation not deemed an insurance company—To make statement—What they contain—Fees of auditor.—9. All corporations, associations or societies organized under the provisions of this act, or that have heretofore been organized within this State, under any charter, compact or agreement or statute of this State, for the purpose of furnishing life, accident or permanent disability indemnity or mortuary benefit on the assessment plan, in accordance with the provisions of the first section of this act, shall not be deemed insurance companies, nor subject to the laws of this State relating thereto; but shall comply with and conform to all the requirements and provisions of this act; and shall by their president and secretary or like officers, make to the auditor (—) public accounts, annually, on or before the first day of March in each and every year, a statement under oath, for the year ending on the 31st day of December next preceding, upon blanks furnished by the said auditor, which blanks shall be such as will show its financial condition, assets, liabilities, total amount of indemnity in court, number of members, number whose memberships have terminated during the year and cause thereof, total receipts and sources thereof, total expenditures and objects thereof, and the average amount paid upon each certificate, and shall pay to the said auditor upon filing said certificate a fee of $5.00 and the said auditor shall publish this statement in his annual report;
45 provided that nothing herein contained shall be held to apply to any organization of a purely social, religious or benevolent character where no commissions are paid and salaried officers or agents employed; nor to any local association or society organized

under, or subject to the control of a grand or supreme body, nor to any secret organization having subordinate lodges or councils which have been organized under the laws of this or any other State and which is now permitted to do business in this State.

Remainder of act omitted.

A copy of the certificate of authority issued to defendant company by the insurance department of Missouri to transact the business of insurance in Missouri on the assessment plan under an act entitled "Insurance companies on the assessment plan." Laws 1887, p. 199.

Insurance department of the State of Missouri.

Certificate of Authority.

It is hereby certified that the Knights Templars and Masons' Life Indemnity Company of Chicago, Illinois, has complied with the requirements of the insurance laws of this State, and is hereby authorized, subject to the provisions thereof, to do the business of life insurance on the assessment plan in the State of Missouri until the first day of February, one thousand eight hundred and eighty-nine.

In witness whereof, I, Alfred Carr, superintendent of the insurance department of the State of Missouri, have hereunto set my hand and affixed my seal of office in duplicate at city of St. Louis, this eighteenth day of June, 1888.

ALFRED CARR,
Superintendent.

Similar certificates were issued to said company in each year subsequent to 1888, up to and including 1897.

Senate bill No. 105 as originally introduced.

Extracts from the Senate Journal and House Journal of 39th General Assembly of Missouri, 1897, relating to senate bill No. 105, also showing section 5869 as it was before the amendment of 1897 and as it is now, amended,

Was offered and read in evidence by the defendant.

Senate bill No. 105 as originally introduced.

Insurance: Insurance Companies on the Assessment Plan.

An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled "Insurance com-
46 panies on the assessment plan" and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3, chapter 89, of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance and defense thereon for such misrepresentation.

SECTION 1. Company shall annually make statement of its affairs to the superintendent of the insurance department—duty of the superintendent of the insurance department.

Be it enacted by the General Assembly of the State of Missouri as follows:

SECTION 1. That section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled "Insurance companies on the assessment plan," be and the same is hereby repealed and the following new section to be known and designated as section 5869 of article 3, chapter 89 of the Revised Statutes of Missouri of 1889 be enacted in lieu thereof:

SECTION 5869. Every corporation doing business under this article, shall annually, on or before the first day of February, return to the superintendent of the insurance department, in such manner and form as he shall prescribe, a statement of its affairs, for the year ending on the preceding 31st day of December, and the said superintendent in person or by deputy, shall have the power of visitation of and examination into the affairs of such corporation, which are conferred upon him in the case of life insurance companies by the laws of this State; and all such foreign companies are hereby declared to be subject to, and required to conform to the provisions of sections 5912, 5849 and 5850 of the Revised Statutes of Missouri of 1889, and governed and controlled by all the provisions in said section contained; provided always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth and provided.

Ninth day, Monday, January 18, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senator Major introduced senate bill No. 105, entitled

"An act to repeal section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu
47 thereof to be known and designated as section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance and defense thereon, for such misrepresentation."

Which was read first time and 75 copies ordered printed.

Fourteenth day, Monday, January 25, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

The following senate bills read the second time and referred to committee as follows:

Senate bill No. 105 entitled:

"An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled 'Insurance companies on

the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentation."

To committee on insurance and insurance companies.

Eighteenth day, Friday, January 29, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senator Childers, from the committee on insurance and insurance companies, submitted the following report, which was read:

Mr. President: Your committee on insurance and insurance companies, to which was referred senate bill No. 105, entitled:

"An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentation."

Begs leave to report that it has examined the same and recommends that it do pass, with the accompanying amendment:

Amend senate bill No. 105 by inserting between the word "section" and the figures "5912" in the 28th line of said original senate bill, the figures "5855;"

Which was read first and second times and adopted.

48 Nineteenth day, Monday, February 1, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senate bill No. 105 was taken up, and on motion of Senator Major, was ordered engrossed and printed.

Twenty-first day, Wednesday, February 3, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senator Miller, from the committee on engrossed bills, submitted the following report, which was read:

Mr. President: Your committee on engrossed bills, to which was referred senate bill No. 105, entitled:

"An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89

of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentation."

Begs leave to report that it has compared the same, and finds it to be truly engrossed, and that the printed copies thereof furnished to the senators are correct.

Twenty-second day, Thursday, February 4, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senate bill No. 105, entitled:

An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentations,

Was taken up, read third time, and passed by the following vote:

49 Yeas—senators:

Anderson,	Klene,	Marshall,
Seaber,	Burkhead,	Lancaster,
Martin,	Vanduver,	Busche,
Landrum,	Powers,	Wells,
Childers,	Madison,	Schweickhardt,
Young.	Hohenschild,	Major, 18.

Nays—senators:

Brewster,	Goodykoontz,	Miller,
Orchard,	Davisson,	McClintic,
Mott,	Williams,	Drum, 11.
Matthews,	O'Bannon,	

Absent with leave—senators:

Ballard,	Lyons,	Morton,
Peers,	Gray, 5.	

The president declared the bill passed.

The title was read and agreed to.

Senator Major moved to reconsider the vote by which the bill was passed.

Senator Madison moved to lay that motion on the table.

The latter motion prevailed.

Twenty-third day, February 4, 1897.

House met pursuant to adjournment.

Mr. Avery in the chair.

The following message was received from the senate through its secretary, Mr. Roach:

Mr. Speaker: I am instructed by the senate to inform the house that there has been introduced into and passed by the senate, senate bill No. 105, entitled:

An act to repeal section 5869 of article 3, of chapter 89, of the Revised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan" and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3, chapter 89, of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance and defense thereon for such misrepresentations:

In which the concurrence of the house is respectfully requested.

Which was read.

Thirty-first day, Monday, February 15, 1897.

House met pursuant to adjournment.

Speaker Farris in the chair.

Senate bill No. 105, was read second time and referred to committee on insurance.

50 Thirty-sixth day, Saturday, February 20, 1897.

House met pursuant to adjournment.

Speaker Farris in the chair.

Mr. Miller, from the committee on insurance, submitted the following report:

Mr. Speaker: Your committee on insurance to which was referred senate bill No. 105, entitled:

An act to repeal section 5869 of article 3, of chapter 89, of the Revised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known as section 5869, article 3, chapter 89 of the Revised Statutes for Missouri of 1889, relating to statement of affairs of assessment insurance companies, and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentations;"

Begs leave to report that it has examined the same and recommends that it do pass.

Which was read.

Forty-eighth day, Saturday, March 6, 1897.

House met pursuant to adjournment.

Speaker Farris in the chair.

Mr. Bohart, from the committee on calendar, submitted the following report:

Mr. Speaker: Your committee on rules begs leave to report the following bills for calendar of the 6th inst., for third reading and passage:

Senate bill No. 105; which was read.

Fiftieth day, March 9, 1897.

Senate bill No. 105, entitled, An act to repeal section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri for 1889, entitled, "Insurance companies on the assessment plan" and to enact a new section in lieu thereof, to be known and designated as section 5869, article 3, chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentation,"

Was read third time and passed by the following vote: Ayes—88. Nays—26. Absent—16. Absent with leave—9. Sick—1.

(Names of members are given in the journal, but omitted in this copy.)

Title to senate bill No. 105, was agreed to.

Mr. Whitecotton moved that the vote by which senate bill No. 105 was passed be reconsidered, and that the motion be laid on the table. Which was carried.

51 Forty-seventh day, Tuesday, March 9, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

The following messages were received from the house of representatives through its chief clerk, Mr. Green, which were read:

Mr. President: I am instructed by the house to inform the senate that the house has taken up and passed senate bill No. 105, entitled:

An act to repeal section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, entitled "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies, and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentations.

Forty-eighth day, Wednesday, March 10, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senator Orchard, from the committee on enrolled bills, submitted the following reports, which were read:

Mr. President: Your committee on enrolled bills, to which was referred senate bill No. 105, entitled,

An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations

made in securing a policy of insurance, and defense thereon, for such misrepresentation.

Begs leave to report that it has compared the same, and finds it to be truly enrolled.

Forty-ninth day, Thursday, March 11, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senate enrolled bill No. 105, entitled,

An act to repeal section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan," and to enact a new section in lieu
52 thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies, and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentations:

Was taken up and the president announced that the same had passed both branches of the General Assembly; that all other business would be suspended, the bill read at length, and that unless objection be made, he would sign the same, to the end that it (*became*) a law, and directed the secretary to read the bill. The bill was read at length by the secretary, and no objection being made, the presiding officer, in the presence of the senate, in open session, and no other business intervening, affixed his signature thereto. The bill was then taken to the house of representatives, signed by the speaker, and immediately presented to the governor by the secretary for his approval.

Fifty-second day, Thursday, March (*11*), 1897.

All business being suspended, senate bill No. 105, was then read at length, and no objection being made, the speaker, in open session, in the presence of the house, affixed his signature thereto, as provided by the constitution.

Fifty-second day, Monday, March 15, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

The following messages were received from the governor through his private secretary, Mr. Moore; which were read:

STATE OF MISSOURI, EXECUTIVE DEPARTMENT,
JEFFERSON CITY, *March* 15, 1897.

To the president of the senate.

SIR: I have the honor herewith to return to the senate, with my approval indorsed thereon, the following bills:

Senate bill No. 105, entitled,

An act to repeal section 5869 of article 3, of chapter 89 of the Re-

vised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies, and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentations.

Respectfully, LON V. STEPHENS, *Governor.*

53 SECTION 5869. Statement of affairs to be made: Every corporation doing business under this article shall annually, on or before the first day of February, return to the superintendent of the insurance department, in such manner and form as he shall prescribe, a statement of its affairs for the year ending on the preceding 31st day of December, and the said superintendent, in person or by deputy, shall have the power of visitation of and examination into the affairs of any such corporation which (*are*) conferred upon him in the case of life insurance companies by the laws of this State; and all such foreign companies are hereby declared to be subject to and required to conform to the provisions of section 5912 of the Revised Statutes of Missouri, 1889; provided always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth. (Laws 1887, p. 199.)

* * * * * * *

SECTION 5869. Every corporation doing business under this article shall annually, on or before the first day of February, return to the superintendent of the insurance department in such manner and form as he shall prescribe, a statement of its affairs for the year ending on the preceding 31st day of December, and the said superintendent, in person or by deputy, shall have the power of visitation of and examination into the affairs of any such corporation, which (*are*) conferred upon him in the case of life insurance companies, by the laws of this State; and all such foreign companies are hereby declared to be subject to and required to conform to the provisions of section- 5855, 5912, 5849 and 5850, of the Revised Statutes of Missouri of 1889, and governed and controlled by all the provisions in said sections contained; provided always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth and provided. (Laws 1887, p. 199; Laws 1897, p. 130.)

The foregoing agreed statement of facts and exhibits were all the evidence submitted to the court, and thereupon the said case was taken under advisement.

And afterwards, to wit, on the 26th day of June, 1899, the said judge declared the law to be as follows:

54 UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, April Term, 1899.

MONDAY, *June 26th, A. D.* 1899.

ROSA B. JARMAN
against
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois. } 2341.

This case having heretofore come on for final hearing a jury having been duly waived by stipulation in writing filed herein, on the agreed statement of facts and the exhibits thereto attached, the court declares the law to be:

(1st.) That the contract of insurance in question was and is subject to the provisions of section 5855 of the Revised Statutes of Missouri, of 1889, which was section 5982 of the Revised Statutes of 1879, in force at the time of the issue of the policy in question; and that said contract was not and is not affected by either of the amendments of the constitution of the defendant company as shown in Exhibit "D" to the agreed statement of facts; and that the plaintiff is entitled to recover judgment against the defendant for the sum of five thousand dollars ($5,000) the amount of the certificate of membership; and eight hundred and eleven dollars and eighty-three cents ($811.83) the amount of the assessments paid into the company by the assured, making in the aggregate the sum of $5,811.83 and interest thereon from November 28th, 1898, at the rate of six per cent. per annum; and,

(2nd.) That the plaintiff is not entitled to have added thereto ten per cent. damages under the provisions of section 5927 of the Revised Statutes of Missouri, 1889.

It is therefore considered, ordered and adjudged by the court that the plaintiff, Rosa B. Jarman, recover of the defendant, Knights Templars and Masons' Life Indemnity Company of Illinois, said sum of six thousand and thirteen dollars and thirty cents ($6,013.30) so found to be due, together with her costs herein laid out and expended and have thereof execution.

To each of the declarations of law in the first paragraph and the findings of the court therein and to the entry of judgment, counsel for the defendant then and there excepted.

This bill of exceptions is presented and allowed and signed this 26th day of August, 1899.

(Signed) JNO. F. PHILLIPS,
United States Dist. Judge.

55 On the same day, to wit, on the 28th day of August, 1899, a bond for writ of error was filed in the above-entitled cause.

Said bond is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *set:*

Know all men by these presents, that we, the Knights Templar and Masons' Life Indemnity Company as principal, and the American Surety Company, as surety, are held and firmly bound unto Rosa B. Jarman in the full and just sum of seven thousand dollars, to be paid to the said Rosa B. Jarman, her heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 25th day of August, in the year of our Lord, one thousand eight hundred and ninety-nine.

Whereas, lately, at the April term of the circuit court of the United States, for the western division of the western district of Missouri, in a suit depending in said court between Rosa B. Jarman, plaintiff, and The Knights Templar and Masons' Life Indemnity Company, defendant, judgment was rendered against the said defendant and the said defendant has obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Rosa B. Jarman, citing and admonishing her to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such that if the said Knights Templar and Masons' Life Indemnity Company shall prosecute said writ of error to effect, and answer all damages and costs, if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

KNIGHTS TEMPLAR & MASONS'
LIFE INDEMNITY CO., [SEAL.]
By S. P. HUSTON. [SEAL.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By E. F. SWINNEY,
Resident Vice-President. [SEAL.]

Signed and sealed in presence of
[SEAL.] Attest: J. W. BOWMAN,
Resident Ass't Secretary.

The above bond is hereby approved and ordered to be filed and made a part of the record.

This 26th day of August, 1899.

(Signed) JNO. F. PHILIPS, *Judge.*

56 STATE OF MISSOURI,)
County of Jackson,) *ss:*

J. W. Bowman, being duly sworn, says: That he is resident ass't secretary at Kansas City, of the American Surety Company of New York; that said company is a corporation duly created, existing and engaged in business as a surety company under and — virtue

of the laws of the State of New York; and has duly complied with all the *the* requirements of the laws of said State, applicable to said company, and is duly qualified to act as surety under such laws. That said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13, 1894, entitled, "An act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said company as rendered pursuant to section 4 of said act of Congress; that said American Surety Company is worth $2,500,000.00 over and above all its debts and liabilities and such exemptions as may be allowed by law.

J. W. BOWMAN.

Subscribed and sworn to before me this 25th day of August, 1899.

[SEAL.] R. F. PORTER,
Notary Public, Jackson County, Mo.

American Surety Company of New York; general offices, 100 Broadway; incorporated Apr. 14, 1884.

Financial Statement March 31, 1899.

Resources.

Real estate and improvements	$3,213,930.66	
Stocks and bonds	953,626.60	
Bills receivable	158,280.12	
Cash in banks and offices	697,061.31	
Premiums in course of collection	182,270.38	
Accrued interest and rents	32,809.37	
		$5,237,978.44

Liabilities.

Bills and accounts payable	$25,093.67	
Claims in process of adjustment	174,259.39	
Premiums reserve requirements	632,429.53	
Undivided profits	906,195.85	
Surplus	1,000,000.00	
Capital stock	2,500,000.00	
		$5,237,978.44

57 *Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.*

The regular quarterly meeting of the board of trustees of the American Surety Company of New York was held at the company's office, No. 100 Broadway, in the city of New York, on Wednesday, January 18th, 1899, at 12 o'clock noon.

The president assumed the chair.

On motion David B. Sickels was elected secretary. * * *

The secretary read the report of the nominating committee, as follows:

To the board of trustees of the American Surety Company of New York.

GENTLEMEN: The committee appointed by the trustees of this company, at their meeting held Wednesday, December 28th, 1898, for the purpose of nominating officers of the company for the ensuing year, beg leave to report as follows:

We nominate for the ensuing year the following gentlemen as resident vice-president-, at Kansas City, Missouri: A. A. Tomlinson, George F. Putnam.

Resident assistant secretaries, at Kansas City, Missouri: J. W. Bowman, Robert F. Porter.

* * * * * * *

Whereupon, on motion, the secretary was instructed to cast one ballot on behalf of the trustees present, and the aforementioned officers * * * as recommended by the nominating committee were declared to have been unanimously elected to their respective offices for the ensuing year.

The following resolutions were adopted:

"Resolved, That the resident vice-presidents be and they hereby are, and each of them is hereby authorized and empowered to execute and deliver and attach the seal of the company to any and all obligations for or on behalf of the company, such obligations, however, to be attested in every instance by the resident assistant secretary."

At a meeting of the executive committee of the American Surety Company, of New York, held at the office of the company, No. 100 Broadway, in the city of New York, on June 7th, 1899, the following resolution was adopted:

"Resolved, That E. F. Swinney of Kansas City, Missouri, be and he is hereby constituted and appointed a resident vice-president, of the company at Kansas City, aforesaid, with full power and authority to execute bonds on behalf of the company in its business and in accordance with its charter."

58 STATE OF NEW YORK, }
County of New York, } *ss.:*

I, William S. MacKellar, assistant secretary of the American Surety Company of New York, do certify that I have compared the foregoing extracts and transcripts from the record book of the board of trustees, of the American Surety Company of New York, with the original record of said board, and that the same are correct extracts and transcripts therefrom, as they appear of record and are set forth and contained in said record book, and I further certify that I have compared the foregoing resolutions with the original thereof, as recorded in the minute book of said company, and do certify that the same are correct and true transcripts therefrom, and of the whole of said original resolutions.

Given under my hand and the seal of the company, at the city of New York, this twenty-seventh day of June, 1899.

[SEAL.] W. S. MACKELLAR,
Assistant Secretary.

The opinion filed June 26th, 1899, in the above-entitled cause, is in words and figures, as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

ROSA B. JARMAN, Plaintiff,
vs.
KNIGHTS TEMPLARS & MASONS' LIFE INDEMNITY COMPANY of Illinois, Defendant. } No. 2341.

Opinion by PHILIPS, *D. J.*:

This case was submitted to the court without the intervention of a jury on the agreed statement of facts with some additional evidence; and the controversy briefly stated grows out of substantially the following state of facts:

The defendant is a life insurance company, doing business on what is known as the assessment plan, by which it issues policies of insurance to Masons who become members of the company on application. In 1885 it issued a policy to John P. Jarman, whereby, in case of death, and proof thereof, it promised to pay to his wife or children or heirs in the order named, the sum of five thousand dollars and all assessments paid to the company by the assured. In 1898 the assured died by a gunshot wound, inflicted by himself while insane. This suit is brought by his wife to recover on the policy. The principal matters of defense interposed by the defendant are (1) that the policy exempts the defendant from liability for death resulting from an act of suicide; and (2) if it should be
59 held by the court that said provision of the policy was void under the statute of Missouri in force at the time of the issue of the policy declaring that the fact of suicide should be no defense to a suit on a life policy then the defendant is not required to pay to the plaintiff the sum of all the assessments paid in by the assured during his lifetime, for reasons which fully appear in this opinion.

The first question, therefore, for decision arising on the facts and evidence submitted is, does the fact that the insured died by his own hand defeat the right of recovery on this policy? At the time of the issue of the policy,—which admittedly was a Missouri contract—the following provision of the Missouri statute was in force:

"In all suits upon policies of insurance on life hereafter issued by any life insurance company authorized to do business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void." (Section 5982, Revised Statutes of Missouri of 1879; section 5855, Revised Statutes of Missouri of 1889.)

The language of the statute is comprehensive. It applies to all "policies of insurance on life hereafter issued by any life insurance company doing business in this State." On a life policy issued by

this same defendant, tried in this court, it was distinctly held by Judge Caldwell on the circuit (Berry *vs.* Knights Templars & Masons' Life Indemnity Company, 46 Fed. 439) that this company at the time in question was engaged essentially in the life-insurance business and nothing else. This ruling was affirmed by the court of appeals (50 Fed. 511.) It was as distinctly further held in this case that said section of the Missouri statute applied to such policies, and cut off the defense of death by suicide. The policy sued on in that case was issued in 1885, and the act of suicide was committed in November, 1889. As in the case at bar, the act of suicide was subsequent to the enactment of the statute, of 1887, now section 5869 Revised Statutes of Missouri of 1889, relied on by defendant to avoid the operation of said section 5855. Said act of 1887, after directing that all insurance companies doing business in the State should make certain returns to the insurance department touching the state of its affairs and subjecting it to visitation and examination, contained the following clause:

60 "And all such foreign companies are hereby declared to be subject to, and required to conform to the provisions of section 5912, of the Revised Statutes of Missouri of 1889; provided always that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth."

The only feature which in this respect differentiates the Berry case from this, is the fact that in the former it did not appear from the evidence that the defendant company had ever complied with the provisions of the act of 1887, or that it was doing business in Missouri under the requirements and liabilities imposed by the act; while in the case at bar it does appear that in 1888 the company complied with said statute, attempting to do business in the State on the assessment plan.

It is to be conceded to defendant that as to policies issued on the assessment plan subsequent to the statute of 1887 and prior to 1897, said section 5855, denying the defense of suicide does not apply. (Haynie *vs.* Knights Templars & Masons' Indemnity Company, 139 Mo., 416.) The policy in the Haynie case was issued in 1888, and the insured committed suicide in 1893.

It is on said act of 1887 that defendant's counsel have builded a most elaborate argument, on the assumption that this act superseded and repealed the provisions of said section 5855 in respect of assessment companies; and therefore the rights of the parties in this action are to be determined as if said section 5855 had been expunged from the statutes at the time the cause of action arose in this case. In support of this contention reliance is placed upon rulings akin to that in Ewall *vs.* Daggs, 108 U. S., 143, which was, in effect, that when the right of a party to a given contract to avoid it on the ground of a statutory enactment based upon the declared public policy of the State, where such right pertains rather to the remedy than an essential element of the contract, inducing its execution, may, by subsequent act of the legislature, be entirely taken away,

the parties are remitted to the terms of the contract as expressed on its face. Judge Shiras, who wrote the opinion of the court of appeals in the Berry case, declined to pass affirmatively upon the correctness of this contention, because it did not appear from the record before him that the company had complied with the provisions of the act of 1887, entitling it to plead exemption from the operation of said section 5855. But it is quite apparent from the trend of his observations that the inclination of his mind was against the contention of the defendant, if the requisite facts had appeared. In that connection he said:

61 "Before this question can arise it must be made clear that the legislature of the State intended to repeal by the act of 1887, the provisions of section 5982 (now section 5855), in its applications to policies previously issued by companies doing business under the assessment plan; and in our judgment, the intention to repeal the section in this particular is not made clear. In the first place, the legislature of Missouri has not repealed section 5982 (now section 5855). It is still the law of the State that companies engaged in the business of life insurance shall not be permitted to exempt themselves from liability for death by suicide not contemplated when the application for its insurance is made."

His assertion was correct. The act of 1887 only exempted assessment companies from the operation of section 5855. In other words it only suspended its operation in its application to assessment insurance companies; and in view of the general law, and especially of the constitution of Missouri, the act of 1887 only had, and could only have, a prospective operation, and in no degree affected antecedent policies issued by such companies.

Counsel misconceive the character of section 5855. It is something more than a mere declaration of the State as to its public policy prohibiting such contracts, and affecting merely the remedy, which the legislature might at will revoke, leaving in force the provisions of a policy that an act of suicide could be pleaded to defeat recovery thereon. On the contrary, this statute became a constituent element of the contract itself between the parties, constituting a part of the consideration for entering into the contract. In contemplation of law it was the same as if it had been written into the face of the policy, that in case of suit to enforce the payment of the stipulated sum, the defendant should not plead thereto that the insured committed suicide, unless it should be shown that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary should be void. Judge Dillon, in White *vs.* Ins. Co., 4th Dillon, 177, speaking of another section of this same statute respecting the effect of misrepresentations made in obtaining or securing the policy, said:

"We are of opinion that policies of insurance issued and delivered in Missouri after that act took effect fall within its prospective operation; and as to such policies the act is to be treated as if incorporated therein. * * * The general rule is that the laws in existence are necessarily referred to in all contracts made under such laws, and that no contracts can change the law."

62 This same principle was announced by Chief Justice Sherwood, in State to the use of Wolff *vs.* Burning, 74 Mo., 87: "For whatsoever the law annexes as the incident of a contract, whether granting a privilege or announcing a prohibition, is as much part and parcel thereof as though written therein or endorsed thereon." (See also Reed *vs.* Painter, 129 Mo., 680.) Again in the recent case of Cravens *vs.* New York Life Ins. Company, 50 S. W., 519–524, the supreme court say: "Being a Missouri contract, the statute then in force with respect to the subject-matter of the contract entered into and became a part thereof as much so as if copied therein." We may conclude this part of the discussion by the application of the appropriate language of Mr. Justice Gray in Equitable Life Society *vs.* Clements, 140 U. S., 233, which went from this court:

"The statute is not directory only or subject to be set aside by the company with the consent of the assured; but it is mandatory and controls the nature and terms of the contract into which the company may induce the assured to enter."

The provisions of section 5855, being a constituent part of the contract of insurance, it would not have been competent, even had it so attempted, for the legislature to destroy the protecting provisions of this statute by a subsequent repeal thereof (which it does not attempt to do), as it relates to antecedent policies of insurance. This for the obvious reason that the Constitution of the United States prohibits the State from passing any law impairing the obligation of contracts. As said in McCracken *vs.* Hayward, 2d Howard, 612: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of obligation to perform them by the one party and the right acquired by the other. * * * If any subsequent law affect to diminish the duty or impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence any law which in its operation amounts to a denial or obstruction of (*of*) the rights accruing by the contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution."

The act of 1887 was not retrospective in its operation. "It is a sound rule of construction that a statute should have a prospective operation only, unless its terms show clearly a legislative intention that it should operate retrospectively. And some States have deemed it just and wise to forbid such laws altogether by
63 their constitution." Cooley Con. Lim., 5th ed., p. 456. The constitution of Missouri, section 15, article 2, declares, "that no *ex post facto* law nor law impairing the obligation of contracts, or retrospective in its operation, etc., can be passed by the General Assembly."

But what is still more fatal to the position of defendant is the fact that in March, 1897, the legislature of Missouri, (Laws of Missouri, 1897, p. 130), repealed said act of 1887, section 5869 aforesaid of the Revised Statutes of Missouri of 1889, and expressly subjected

insurance companies on the assessment plan to the provisions of said section 5855, thus clearly showing the legislative construction that by the act of 1887 said section 5855 was not repealed, but such companies were only for the time being exempted from its operation. Clearly enough, the mere repeal of said act of 1887 would have remitted such insurance companies, and such policies of insurance as the one in question, to the operation of section 5855, without the affirmative provision expressly applying it to such companies. The effect, therefore, of this act of 1897 was to place this contract of insurance in the precise attitude in which it stood in 1885, when the policy was issued, and would avail this plaintiff, the death of the assured occurring subsequent to the act of 1897. At all events it effectually meets the argument of counsel. If the act of 1887 was a recall of the public policy of the State respecting such companies, as declared in said section 5855, this public policy was reasserted by the act of 1897. In this respect, the facts of this case are essentially different from that class of cases cited by counsel in which the statutes in question had been repealed. The result is that the first question arising on this record must be answered in the negative.

The remaining question for consideration is as to the amount of recovery on this policy. On its face the policy provides that within 60 days after notice and proof of death the company will pay the widow, children, etc., in the order named, the sum of $5,000, and all money paid by the assured in assessments subject to the limitation as to the amount of such payment, provided in section 1 of article 7 of the constitution of the company, printed on the back of the policy, which section is as follows:

"Upon due notice and satisfactory proof of death of a member of this company, the board of directors shall, within 60 days, pay the widow, children or heirs of the deceased member (and in the order named unless otherwise ordered by the member during his lifetime or in his will) the amount set forth in the deceased member's policy of membership; provided, that the policy of membership for
64 $5,000 shall be good for all money in the death fund arising from one assessment, provided it shall not exceed $5,000, and all money paid on the policy in assessments."

It is admitted by the agreed statement of facts that at the time of the death of the deceased he held a policy in the company for $5,000.00 and that the assessments paid by him amounted to $811.83. Clearly enough, therefore, without something more, the amount of recovery on this policy would be $5,000 plus the sum of the assessments thereon, to wit: $811.83, with interest at six per cent. per annum from the 28th day of November, 1898, the day agreed upon when the right of action accrued. To avoid this conclusion the defendant invokes the following, found in the application of the assured for membership:

"I further agree, if accepted, to abide by the constitution, rules and regulations of the company as they now are, or may by the constitution be changed hereafter."

The application further stated that "the application on which

this policy is issued is made a part of this policy by reference thereto."

It is claimed by defendant that in pursuance of the authority thus conferred, upon it by the assured, on the 8th day of January, 1889, the board of directors amended article 4, section 3, of the constitution so as to read:

"Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars, and all money paid in assessments upon the policy for the first five years;" and sections of article 7, were amended conformably thereto; by which amendment the amount of assessments to be returned to the beneficiary on the death of the assured was only "for the first five years" instead of all the assessments paid by the assured as provided in the policy. So that under this amendment the amount of assessments to be refunded would be $192.00 instead of $811.83, as provided on the face of the policy.

Having experimented with this change, in January, 1898, the board of directors took an additional long step in the same direction, by striking out entirely the provision for paying back assessments, under which defendant claims it is relieved from paying this plaintiff any assessments collected from the assured.

The question to be decided is, Was it reasonably within the contemplation of the parties in executing the contract of insurance that such changes might be made in the regulations and
65 constitution of the company by its board of managers as to actually diminish the amount agreed to be paid to the wife, children or heirs of the assured on his death? It has been fitly said that common sense and good faith are the leading characteristics of all interpretation of contracts. If the board of directors was authorized to go thus far, where is the boundary line to be placed beyond which it may not go in cutting down the value of the policy? If the extent of such diminution rests absolutely in the discretion or judgment of the governing board, it can as well say that the company will pay to the wife or children only $1,000 or a less sum, on the death of the assured. Such a construction is so at variance with the conception of an honest mind as to challenge its correctness. Perceiving the force of this suggestion, counsel for the company place their ultimate argument upon the ground that the proper limitation of such dividing line — between what is reasonable and what is unreasonable. It must readily occur to the judicial mind that such ground is dangerous quicksand; for the jury or court, whichever might be called upon to determine this question, would be in danger of making for one or the other, or both of the parties to this policy a contract upon which their minds never met. This is fitly illustrated by the reasoning of counsel whereby the amendment of 1889 is justified in reducing the recovery for paid assessments to those paid within the first five years; and by the same process of reasoning the amendment of 1898 is justified, whereby the whole provision of the contract allowing recovery of any assessments whatever, is wiped out. And it is not clear to the average mind why the same specious logic might not be employed to justify an amend-

ment whereby instead of paying the sum of $5,000, only $4,000.00 should be paid; on a like assumption that such reduction of liability would lessen the amount of assessments made upon the assured to meet such losses and would produce greater equality among the policy-holders who received their policies prior and subsequent to such amendments, and further strengthen the financial basis on which the institution rests.

There is great common sense in the utterance of the court in Walsh *vs.* Hill, 38 Cal., 481, that "in the construction of written instruments we have never derived much aid from technical rules of the books. The only rule of much value—one which is frequently shadowed forth, but seldom, if ever, expressly stated in the books—is to place ourselves as nearly as possible in the seats which were occupied by the parties at the time the instrument was executed; then taking it by the four corners, read it."

66 The underlying vice of defendant's argument is that the assumed methods of working out the conception of insurance experts for better sustaining the business of the company, is a refinement which could be said to have been in the reasonable anticipation or expectation of the policy-holder at the time he was induced to take his membership. On the face of the policy he was assured that in the event of his death his wife or children would receive $5,000 and all the sums he might pay in by way of assessments. And it may well be imagined how this provision was made attractive to Mr. Jarman by the persuasive tongue of an insurance solicitor. For on its face the allurement was held out to him, not only that his family should receive $5,000, but that whatever assessments should be imposed upon him to raise the necessary funds for paying other losses would be returned to his family. No such possibility was apparent or stated to him by the agent of the company as is sought to be worked out by the experts to justify either of said amendments. No such amendments had ever before been made to the constitution of this company; and the conception even of the experts of the company came four years later. As was said by the supreme court of this State: "It is a rule of construction that the promissor is bound according to the sense in which he apprehended that the promisee received his proposition." Bruner *vs.* Wheaton, 46 Mo., 363. And while the rule may at times be abused in its application it certainly is a correct one as applied to this instance, that the application for the policy of insurance having been drawn by astute counsel of the company, who study with care to make it favorable to the company, and employ technical terms unfamiliar to the assured" it is only a fair rule which the courts have adopted to resolve any doubt or ambiguity in favor of the insured against the insurer." It is not too much to say that at the time this company so amended article 4, section 3, (to which sections 1 and 4 of articles 7 were made to conform) its directors had no thought that it had any retroactive effect. The language is: "Policies may be issued upon a basis of benefits ranging in amounts from $5,000.00 and all money paid in assessments upon the policy for the first five years"—

that is future policies may be so issued. As already laid down in this opinion, all statutes and constitutional provisions are presumed to be prospective in their operation, unless the contrary appears upon their face. It may be conceded that it was perfectly competent for the board of directors to make such amendments to affect all after-issued policies; and all subsequent members would take subject thereto, and would be amenable to the method thus established of assessments to pay for losses. The argument of counsel that
67 this condition of affairs would have the effect to increase the amount of assessments on anterior policy-holders, and might in practice produce other complications, such as adding to the work of accounting clerks in making monthly estimates, of the liabilities and the like, is but the argument *inconvenienti*. No difficulty arises in this case about paying the sum of assessments paid in by the assured, because there is no claim that there is not sufficient money in the death fund to pay the maximum loss in full. The assured has the right to say to this company: "I have not asked you to lessen the burden of my assessments; and perhaps it would not concern you so much but for the fact that the amount under my contract which would be paid my family is far greater than the small diminution of my assessments." While the result of the intricate sum worked out on paper by the company's experts may prove advantageous to the company, and possibly to future policy-holders, it ought not to be done at the expense of the anterior policy-holder.

It is among the recognized canons of the rules of construction that when operation and effect can be given to each and every part of a contract or statute, without giving to one provision a construction which subverts or qualifies another material provision, that which preserves the harmony and force of all should be preferred. There were many provisions of the rules and constitution of the company in force at the time of issuing the policy upon which the stipulation respecting amendments could properly operate, justifying a judgment that the reasonable application of the stipulation should be referred to such matters, without impairing the express obligation of the company to pay a specified sum, readily ascertainable. The natural and more reasonable idea of such a recitation as the one in question in the application for membership would convey to the mind of the applicant would be only that he was consenting in advance to such changes in the regulations and constitution of the company as in the judgment of the board of directors might seem to be conducive to the more efficient conduct and administration of the business; pertaining to method, discipline, restriction on travel and the acts of the assured, or the amount of annual dues or assessments, as well as the employment and investment of the death fund and other like matters. But it is inconceivable that either party could have intended that the construction might be placed upon the application that the applicant was consenting in advance that the promise expressed on the face of the policy to pay his family or heirs could be changed, either at the pleasure of the directors or

upon some ground of expediency resting in the mind of some future board of directors, or even that of a court or jury. In short, that he was consenting that the very essence of and inducement to the contract on his part depended upon other basis than that of the
68 express promise written in the policy. It seems to me, with all due deference, that to give such construction to this policy would make it but a snare and a delusion to entrap the unwary. It took four years after issuing this policy for the managing officers of the company to bring themselves to the attempt to cut down the value of this policy to the extent of limiting the amount of assessments to be returned, to the period of five years; and then, after waiting nine years more, during which time the assured was promptly paying his dues and assessments, they ventured upon the further experiment of attempting by one stroke of the pen to expunge entirely the provision for returning any assessments whatever. Such a construction of the contract cannot receive the assent of this court. The court, therefore, finds this issue for the plaintiff; and directs a judgment for the plaintiff in the sum of $5,811.83 with interest thereon from November 28, 1898, at the rate of six per cent. per annum.

The plaintiff demands further judgment of ten per cent. damages on the amount awarded. This demand is based upon section 5927 of the Revised Statutes of Missouri of 1889, which authorizes the court to allow the plaintiff damages not exceeding ten per cent. on the amount of the loss "if it appear from the evidence that such company has vexatiously refused to pay such loss." In view of the fact that the provision of the act of 1887 and the amendments to the constitution of this company made in 1889 and 1896, have not heretofore been construed by any court in this jurisdiction, and the court being of opinion that the defendant and its counsel are sincere in their contention this claim for damages is disallowed.

UNITED STATES OF AMERICA, *set:*

I, Adelaide Utter, clerk of the circuit court of the United States, for the western division of the western district of Missouri do hereby certify that the above and foregoing is a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case entitled Rosa B. Jarman, plaintiff, *vs.* Knights Templars & Masons' Life Indemnity Company, defendant, as fully as the same appears on file and of record in my office.

Seal United States Circuit Court for the Western District of Missouri, Western Division.

Witness my hand as clerk and the seal of said court. Done at office in Kansas City, Missouri, this 9th day of September, A. D. 1899.

ADELAIDE UTTER, *Clerk.*

(Cancelled 10c. U. S. rev. stamp.)

Filed Oct. 20, 1899.

JOHN D. JORDAN, *Clerk.*

69 By direction of Mr. Hervey B. Hicks, counsel for plaintiff in error, the following portions of the certified transcript of record from the circuit court of the United States for the western district of Missouri, which were omitted from the printed record by stipulation of the parties, are now included in the transcript of record from the United States circuit court of appeals to the Supreme Court of the United States, said portions so omitted from the printed record and now included in this transcript being the transcript of record from the circuit court of Grundy county, Missouri, and the stipulation as to time for pleading, etc., filed in said circuit court of the United States, viz:

UNITED STATES OF AMERICA, *set:*

Be it remembered that heretofore, to wit, on the 20th day of April, A. D. 1899, there was filed in the office of the clerk of the circuit court of the United States, for the western division of the western district of Missouri, a transcript of record from the circuit court of Grundy county, Missouri, in a case wherein Rosa B. Jarman is plaintiff and Knights Templars & Masons' Life Indemnity Company is defendant.

Said transcript is in words and figures as follows, to wit:

STATE OF MISSOURI, }
County of Grundy, } *ss:*

Pleas and proceedings before the circuit court of Grundy county, at a term begun and held in the city of Trenton, county and State aforesaid, on the 20th day of February, 1899, before the Honorable Paris C. Stepp, judge of the third judicial circuit of the State of Missouri.

ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Defendant.

Be it remembered that heretofore, to wit, on the 19th day of January, 1899, a petition was filed in the above-entitled cause in the office of the circuit clerk of the circuit court in and for the county of Grundy, in words and figures as follows, to wit:

In the Circuit Court of Grundy County, Missouri, February Term, A. D. 1899.

70 ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHTS TEMPLARS — MASONS' LIFE INSURANCE COMPANY, Defendant.

Plaintiff states that on and prior to the 24th day of October, 1885, the defendant was duly organized and incorporated under the laws of the State of Illinois, and at said time, and before, and in fact at

all the dates and times herein mentioned, was engaged in carrying on its business of life insurance in the States of Illinois and Missouri.

And that on the 21st day of October, 1885, in consideration of twelve dollars and certain agreements and stipulations expressed in the policy hereinafter specifically mentioned and referred to, John P. Jarman husband of this plaintiff, was admitted to membership in defendant company for the term of life that at said time, at Trenton, Missouri, a certain policy of insurance hereto attached and made a part hereof, was by defendant issued and delivered at said time and place to the said John P. Jarman, husband of this plaintiff, — was admitted to membership in defendant company for the term of life, that at said time at Trenton, Missouri, a certain policy of insurance hereto attached and made a part hereof, was by defendant issued and delivered at said time and place to the said John P. Jarman.

That among other things it is provided by said policy: "In consideration of twelve dollars and the agreement and stipulations hereinafter expressed, John P. Jarman, druggist at Trenton, Missouri, is admitted to the membership in the Knights Templars and Masons' Life Indemnity Company for the term of life from the 24th day of October, 1885, at twelve o'clock noon, and in further consideration that the said John P. Jarman shall pay all dues and assessments made upon him as such member, in pursuance of the constitution and by-laws of said company, at the time and in the manner required of him, the said company will pay, at their principal office, within sixty days after notice, and satisfactory proof of the death of said member is furnished to said company, to Rosa B. Jarman, wife, unless otherwise ordered by the member in his application, or if he chooses subsequently by or otherwise, in which case the company shall be notified by the member in writing and a receipt of such notification be duly acknowledged by the company, the sum
71 of five thousand dollars, and all the money paid on the policy in assessments subject to limitation as to the amount of such payment as is provided in section 1 of article 7 of the constitution on the back of this policy."

Plaintiff says that section 1 of article 7 so referred to upon the back of said policy is as follows:

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall, within sixty days, pay the widow, children or heirs of the deceased member, (in the order named, unless otherwise ordered by the member during his lifetime or in his will) the amount set forth in the deceased member's policy of membership.

Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment, provided it shall not exceed $5,000, and all the money paid on the policy in assessments; and a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates."

Plaintiff says that her deceased husband, John P. Jarman, kept and performed all the conditions and requirements of said contract of insurance on his part; paid all dues and assessments made upon him as such member and holder of said policy at the times and in the manner required of him. That in his application for said insurance and membership in defendant company, upon which said policy was issued, her deceased husband requested said sum so agreed to be paid on his death to be paid to this plaintiff, then his wife; that he never thereafter by will or otherwise designated any other person to whom the same should be paid; that her said husband, during his lifetime, paid on said policy in assessments, the sum of sixteen hundred dollars. That he departed this life at Trenton, Grundy county, Missouri, on the 12th day of September, 1898, that thereafter, on the 18th day of September, 1898, plaintiff made and gave to defendant due proof of the death of her said husband; that in fact, plaintiff has, as did her said husband, kept and performed all the conditions and requirements of said policy and contract.

72 But plaintiff avers that defendant has and does wrongfully and vexatiously refuse to keep and perform the conditions of said policy and contract; that notwithstanding there is now and has ever been since the death of plaintiff's said husband, in the death fund, (mentioned in said section 1 of article 4 heretofore set out) arising from one assessment more than sufficient to pay plaintiff the said sum of five thousand dollars, as well as the sixteen hundred dollars assessment paid by the said John P. Jarman in his life upon said policy as aforesaid, and all interest, damages and penalties incurred, and due thereon, defendant has and now does wrongfully and vexatiously refuse to pay same.

Plaintiff says that by reason of the premises aforesaid, she is entitled to recover of the defendant the sum of five thousand dollars, together with the amounts paid by her deceased husband in assessments on said policy, sixteen hundred dollars, she is, (the defendant having so wrongfully and vexatiously refused to pay the same), under and by virtue of the provision of section 5927 Revised Statutes of the State of Missouri, for 1889, entitled to recover of defendant, as damages, ten per cent. on said sum, or the sum, as damages, of six hundred and sixty dollars; that upon said sum of six thousand and sixty dollars plaintiff alleges the facts to be, that she is entitled to recover six per cent. interest since the 18th day of November, 1898, proof of the death of her husband having been made on said 18th day of September, as aforesaid.

Wherefore plaintiff prays judgment for the sum of seventy-two hundred and sixty dollars ($7,260) with six per cent. interest on sixty hundred dollars thereof, since the 18th day of November, 1898 and for all other and further order, judgments and decrees as may be just and proper, and for costs.

HARBER & KNIGHT,
Attorneys for Plaintiff.

Whereupon a summons was issued to the sheriff of Cole county, on the 19th day of January, 1899, which was returned executed on the 20th day of January, 1899 as follows:

Sheriff's Return.

STATE OF MISSOURI, }
County of Cole, } *ss:*

I hereby certify that I executed the within writ in the county of Cole, State aforesaid, upon the within-named defendant,
73 The Knights Templars and Masons' Life Indemnity Company, on the 20th day of January, 1899, by delivering a true copy of the writ, together with the petition attached to said writ, to Edward T. O'Rear superintendent of the insurance department of the State of Missouri, he being the person authorized by law to acknowledge and receive and upon whom to serve process issuing out of the courts in the State of Missouri for and in behalf of said defendant, under and by virtue of section 5912 of the Revised Statutes of the State of Missouri.

In witness whereof, I have hereunto set my hand as sheriff aforesaid this 20th day of January, 1899.

J. J. HENDERSON,
Sheriff of Cole County, Missouri.

$5,000. No. 861.

The Knights Templars and Masons' Life Indemnity Company.

In consideration of twelve dollars and the agreements and stipulations hereinafter expressed, John P. Jarman druggist of Trenton, Missouri, is admitted to membership in the Knights Templars and Masons' Life Indemnity Company, for the term of life, from the twenty-fourth day of October, 1885, at 12 o'clock noon, and in further consideration that the said John P. Jarman shall pay all dues and assessments made upon him as such member in pursuance of the constitution and by-laws of said company, at the times and in the manner required of him, the said company will pay, at their principal office, within sixty days after notice and satisfactory proof of the death of said member is furnished said company, to Rosa B. Jarman, wife, the children or heirs of said member, and in the order named, (unless otherwise ordered by the member in his application, or if he chooses, subsequently by will or otherwise; in which case the company shall be notified by the member in writing and the receipt of such notification be duly acknowledged by the company—see section 6 of article 7 on the back of this policy), the sum of five thousand dollars, and all the money paid on the policy in assessments, subject to the limitation as to the amount of such payment as is provided in section one (1), of article seven (7), of the constitution on the back of this policy. At the end of each ten (10) years' continuous membership, the said John P. Jarman shall receive
74 a bond bearing three (3) per cent. annual interest payable with the bond, for his entire proportion of the surplus, as per article seven (7) section two (2) which bond is available at any time, without notice, in payment of assessments as set forth in article seven (7), section three (3) of the constitution on the back of this policy.

This policy is issued and the said John P. Jarman is admitted to the membership in this company, and this policy is accepted by said member upon the following agreements and stipulations which are made a part of this contract.

1st. The application on which this policy is issued is made a part of this policy, by reference thereto, and the answers to questions and statements therein shall be a warranty of the truth of such answer and statements and if this policy has been obtained by or through any fraud, misrepresentations or concealment, or by any false statement, then this policy shall be absolutely null and void, and this company may cancel the same, which shall work a forfeiture of all rights under this contract.

2nd. Any failure to pay assessments as provided in conditions printed on the back of this policy, shall forfeit the membership in this company of the holder of this policy, and all benefits arising therefrom; but may be subsequently restored upon such terms as the directors of the company may fix.

3rd. The holder of this policy shall be bound by the post-office address given in the application until the company shall receive notice and acknowledge the same, of a change of such address, and then such post-office address shall bind such member until this company shall receive notice of, and acknowledge, a different post-office address.

4th. That if the holder of this policy shall impair his health, during the time of his membership in this company, by the habitual use of intoxicating drinks, or of opium, upon proof of such fact being made to the satisfaction of the board of directors of this company, such member shall forfeit all claims upon this company and shall be dropped from the roll of its members.

5th. The holder of this policy during the continuance of his membership in this company, is freely permitted to reside in any settled portion of the western hemisphere lying north of the thirty-second parallel of north latitude, at all seasons of the year; and in the
75 United States lying south of said thirty-second parallel, excepting from the first day of July until the first day of November in each year, and in the eastern hemisphere lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich at all seasons of the year; and in Italy south of forty-second parallel excepting from the first day of July to the first day of November of each year; and he may also pass as a passenger by the usual routes of public conveyance to and from any port or place within the foregoing limits; but if he shall at any time during continuance of his membership in this company, pass beyond or be without the foregoing limits, or shall be personally engaged in blasting, mining or submarine operations, or in the manufacture or transportations of explosive substances, or as an employé in any capacity on any sea, lake or river, or any other body of water, or upon any railroad train; or if he shall enter into military service, whether voluntarily or otherwise, (the militia when not in actual service alone excepted) without the consent of this company previously given in writing, signed by the

president or one of its vice-presidents or if his death shall result from injuries received while under the influence of alcoholic liquors; or in any case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane, or in case of his death resulting from any violation of the laws of any nation, State or province, or from any aerial voyage or trip; then and each of the foregoing cases, this policy shall become null and void, and the widow and heirs or devisees of said member shall have no claims for benefits on this company.

Provided that in the case of the suicide of the holder of this policy, then this company will pay to his widow and his heirs or devisees such an amount on this policy as the member shall have paid to this company on this policy in assessments on the same without interest.

6th. To avoid lawsuits, and yet insure the ends of justice, it is expressly stipulated and agreed that all disputes arising between this company and the claimant or claimants of benefits inuring under this policy, shall be settled by arbitration, and in the manner provided by article 8, section 2 of the constitution of this company, as the same appears printed on the back of this policy.

7th. It is further agreed by the holder hereof that, unless
76 claim is made for benefits under this policy by the widow, heirs, devisee or devisees of the said member within six months after the death of said member, then, — for benefits under this policy shall be forfeited, and this company shall be released from all liability for such benefits.

8th. That the constitution or by-laws printed on the back of this policy shall separately and collectively form a part of this contract.

In witness whereof, the said Knights Templars and Masons' Life Insurance Company has caused these presents to be signed by its president, countersigned by its general manager, and affixed its seal in the city of Chicago, State of Illinois, this 24th day of October, 1885.

J. ADAMS ALLEN, *President.*

Countersigned by
W. H. GRAY,
General Manager.

Constitution of the Knights Templars and Masons' Life Indemnity Co.

ARTICLE 1.

Name and Object.

SECTION 1. This company shall be known as the Knights Templars & Masons' Life Indemnity Company.

SECTION 2. The object of this company shall be to furnish life indemnity or pecuniary benefits to the widows, orphans, heirs, relatives, devisees or legatees of deceased members, according to the regulations and provisions hereinafter specified.

SECTION 3. The principal office of the company shall be at Chicago, Illinois, but the board may establish branch offices elsewhere.

ARTICLE 2.

Officers and Directors.

SECTION 1. The officers of this company shall be a president, vice-president, second vice-president, and medical director, to be chosen annually by the board of directors.

SECTION 2. The affairs of the corporation shall be managed by not less than five nor more than nine directors, who shall be elected from and by the members provided that, as near as practicable, an equal number shall be elected each year for a period not to exceed three years. Vacancies occurring in the board shall be filled by the majority vote of all the directors.

SECTION 3. At the election for directors, and on all questions coming properly before the company, every member shall have the right to one vote, either in person or by proxy, for every full one thousand dollars mentioned in his policy at the time of its
77 issue.

ARTICLE 3.

Duties and Powers of Directors.

SECTION 1. It shall be the duty of the board of directors to hold in trust the property and assets of this company in accordance with the provisions of this constitution and the by-laws adopted in pursuance thereof.

SECTION 2. The board of directors shall have power to employ any agent, agents, or other service, for such time and on such terms and with such powers, as in their judgment will best promote and conserve the interests of the company.

SECTION 3. They shall have power to remove and officer for inefficiency or malfeasance, in office at any regular meeting of the board of directors, two-thirds of all the directors voting for such removal, provided the accused shall have thirty days' previous notice of the charges and specifications and shall have the right of self-defense before the board of directors, in person or by counsel. But before the trial of such charges, a majority of all the board of directors may suspend an officer from his office until such trial can be had.

SECTION 4. The board of directors shall select a suitable depository for the funds of the company, which shall be considered safe by the general public. All moneys deposited therein shall be withdrawn only on the check of the president of the company and countersigned by at least one other director. In case of the absence or inability of the president to act, the first or second vice-president may act in his stead.

SECTION 5. The board of directors shall have full charge of all matters not herein provided for, and shall fix the time of the annual meeting of the company.

ARTICLE 4.

SECTION 1. When an applicant has complied with the constitution and by-laws and been accepted, the board of directors shall make over to him through officers of the company a policy of membership, stating the terms and conditions of the contract between the parties, which policy shall be sufficient evidence of his membership at the time it was issued and shall constitute the basis of settlement with the beneficiaries; but no person shall be entitled to the benefits of this company until such certificate is issued and delivered.

78 SECTION 2. Post-office address.—It shall be the duty of all the members to keep the company fully advised of any change of residence or post-office address always giving full address.

SECTION 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars and all money paid in assessments upon the policy, but no member shall hold more than one policy at the same time. Any holder of a policy may change the amount of his benefit, from a lower to a higher amount by the surrender of his policy furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director and paying the sum of five dollars and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

SECTION 4. Upon the death of any member an assessment increasing with age, shall be made upon the surviving members, provided an assessment is needed, according to the following table of rates: Said table is drawn for $1,000 which shall be the unit in determining all other amounts:

Table of Rates—Assessments per $1,000.

Years of age, inclusive,			21 to 30	$0.50
"	"	"	31 to 35	.60
"	"	"	36 to 40	.65
"	"	"	41 to 45	.80
"	"	"	46 to 50	.95
Years of age, inclusive,			51 to 55	$1.20
"	"	"	56 to 60	1.50
"	"	"	61 to 65	2.00
"	"	"	66 and upwards	2.55

But no assessment shall be made so long as the money in the death fund will pay the maximum loss in full.

SECTION 5. There shall be an annual due of one dollar per thousand dollars on the face of the policy, payable on or within ten days after each anniversary of the policy, and a failure to pay said due shall work a forfeiture of the policy of the same as an unpaid assessment.

ARTICLE 5.

SECTION 1. Seventy-five per cent. of all the moneys arising or accruing from assessments shall be placed to the credit of the death fund, which fund shall be used for no other purpose than the payment of death losses.

SECTION 2. All other moneys shall be placed in a contin-
79 gent fund out of which the expenses and emergencies are to be met, and all the remainder or surplus shall be invested in some reliable trust for the payment of the bonds as herein provided.

ARTICLE 6.

Assessments.

SECTION 1. Upon the notice and satisfactory proof of a death of a member, (should it be necessary to make an assessment) the company, or such person as the board may direct, shall send by mail, to the last recorded post-office address of every member, a notice containing the name and residence of the deceased member and the amount due from the member to whom the notice is sent. The party sending such notice may employ a suitable person, persons or corporation in any town or city, who may act in serving such notices either personally or by mail. A notice so sent or served shall be deemed and taken to be a lawful and sufficient notice for the payment of the assessment required.

SECTION 2. Should any one fail to forward, as indicated in the notice, the amount thus due, for a period of ten (10) days after the date of said notice, he shall forfeit his membership and all benefits arising therefrom. Any one having thus forfeited his membership may be reinstated, he being alive, within thirty (30) days after the date of said notice, by the payment of all arrearages and may be reinstated to membership subsequent to the thirty (30) days upon such terms as the board of directors may fix.

SECTION 3. Any member may make a deposit in advance for the payment of his assessments which money shall be used for no other purpose by the company and in case of the member's death before it is so needed the unused balance shall be paid back with the policy.

ARTICLE 7.

Benefits.

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall within sixty (60) days pay the widow, children or heirs of the deceased member, (and in the order named unless otherwise ordered by the member during his lifetime or in his will,) the amount set forth in the deceased member's policy of membership: Provided that a policy of membership for $5,000 shall be good for all money in the death fund arising from one assessment; provided it shall not exceed
80 $5,000 and all the money paid on the policy in assessments; and a certificate for $4,000 shall be good for four-fifths of all the

money in the death fund arising from one assessment provided it shall not exceed $1,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates.

SECTION 2. At the end of each ten years' continuous membership, such member shall receive a bond bearing 3 % annual interest for such a proportion of the surplus on the first day of the month nearest preceding, as all the money paid during the ten years by him on his existing policy bears to the entire amount of money received by the company during the same period.

SECTION 3. Any such bond can be used as par, and accrued interest at any time, without notice in payment of assessments, and no bond shall run longer than the life of the member; but if unused, shall be payable with his policy at death.

SECTION 4. At the end of each five years' continuous membership, the company will, on the return of the policy, to the home office and the payment of twenty-five cents, endorse on it the amount of assessment paid; which amount is payable at death on the same conditions as the policy itself.

SECTION 5. Any member desiring to withdraw, shall be furnished under the seal of the company, an honorable withdrawal card, upon payment of all dues and assessments legally charged to him, and the surrender of his policy with all interest therein.

SECTION 6. Any member having designated his beneficiary or beneficiaries may change the same at his pleasure, without notice to or consent of the beneficiary or beneficiaries and all accepting any interest in this policy or company do so upon these express terms.

ARTICLE 8.

SECTION 1. Any member who shall impair his health by the habitual use of intoxicating drinks, or opium, shall upon proof of the fact to the satisfaction of the board of directors forfeit all claim upon the company and be dropped from the roll of its members.

SECTION 2. To avoid lawsuits, and yet insure the end of justice, it is expressly stipulated that all disputes arising between the company and its members shall be settled by arbitration, and in the manner following, to wit: The company shall select one man, the aggrieved claimant one man, or in case either party shall neglect or refuse to appoint an arbitrator for a period of thirty days after due notice that an arbitration is desired, then in that case the party desiring to arbitrate having selected an arbitrator, may apply to any judge of any court of record in the United States, who shall have power to appoint the necessary referee, and the two thus appointed shall select the third party who shall constitute an authoritative commission to hear and determine the case, and their decision shall be binding and final in all cases, and such decision may be entered as a judgment in any court of record in the county where the home office is located.

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SECTION 3. This constitution may be amended at any regular meeting of this company by three-fourths of those voting:

Provided, that all proposed amendments shall be first submitted in writing to the board of directors, at a regular meeting and if five

(5) directors approve the said amendments then the board shall require a notice of the proposed change to be given to all the members of the said company at least thirty (30) days before the time of said meeting. Every member shall have the right to vote upon proposed amendments, on the condition and in the manner prescribed for the election of members of the board of directors.

SECTION 4. The board of directors shall have power to make by-laws and regulations for the conduct of the business of this company, not inconsistent with the provisions of this constitution.

And afterwards, to wit, on the 20th day of February, 1899, the same being the first day of the regular February term, 1899 of this court, the following further proceedings were had in said cause, to wit:

ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHT TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Defendant.

Defendant files petition and bond for removal which is in words and figures as follows, to wit:

In the Circuit Court of Grundy County, Missouri, February Term, A. D. 1899.

ROSA B. JARMAN, Plaintiff,
vs.
82 KNIGHTS TEMPLARS & MASONS' LIFE INDEMNITY COMPANY of Chicago, Illinois, a Corporation, Defendant.

To the Honorable Paris C. Stepp, judge of said court:

Now comes the defendant herein by its attorney, Hervey B. Hicks, and respectfully presents to the said court this petition for the removal of the above-entitled cause from the said circuit court of Grundy county, Missouri, to the United States circuit court for the western division of the western district of Missouri under the act of Congress touching the matter of such removals and for the grounds of removal respectfully states:

1. That the amount in dispute, exclusive of interest and costs, in the above-entitled suit, commenced in the said circuit court of Grundy county, Missouri, exceeded the sum of $2,000, and is to wit, more than $5,000.

2. That the said suit is brought by Rosa B. Jarman a citizen of the State of Missouri, and against The Knights Templars — Masons' Life Indemnity Company, a corporation organized and existing and doing business — and by virtue of the laws of the State of Illinois, and that said corporation is a citizen of the State of Illinois and is a non-resident of the State of Missouri.

3. Your petitioner presents herewith a bond in the sum of five hundred dollars ($500) with good and sufficient surety conditioned as provided in the act of Congress, approved August 13th, 1888,

governing the removal of suits of a civil nature from State courts to circuit courts of the United States.

Wherefore your petitioner prays that your honor will accept this petition and the bond aforesaid for the removal of said cause to the circuit court of the United States for the district court wherein this suit is pending, and that an order may be entered that the said — shall be removed to said circuit court of the United States in said district for trial therein at the next session of said circuit court to be held after the said removal and that no further proceedings shall be had in said cause in the said circuit court of Grundy county; and your petitioner will never pray, etc.

HERVEY B. HICKS,
Attorney for Defendant.

STATE OF ILLINOIS, }
County of Cook, } ss:

On the 18th day of February, 1899, personally appeared
83 before me the above-named Hervey B. Hicks, who being duly sworn deposes and says that he has read the foregoing petition by him subscribed, and knows the contents thereof, and makes this affidavit on behalf of the defendant, The Knights Templars & Masons' Life Indemnity Company, and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief — as to those matters he believes it to be true.

[SEAL.] A. N. HISLOP,
Notary Public.

Know all men by these presents that the Knight Templars and Masons' Life Indemnity Company of Chicago, Illinois, by Hervey B. Hicks, its attorney-in-fact, and William H. Gray and —— —— are held and firmly bound unto Rosa B. Jarman in the sum of five hundred dollars (500) good and lawful money of the United States, to be paid to the said Rosa B. Jarman or to her attorney, executors, administrators or assigns, for which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this 18th day of February, 1899.

The conditions of the above obligation is such that whereas the said Knight Templars and Masons' Life Indemnity Company the defendant in an action begun in the circuit court of Grundy county, Missouri, at the February, A. D. 1899, term, of said court now pending, entitled Rosa B. Jarman plaintiff, *vs.* The Knight Templars and Masons' Life Indemnity Company, has filed a petition in the said circuit court of Grundy county, Missouri, for the removal of said cause to the United States circuit court for the western division of the western district of Missouri;

Now, therefore, if the said defendant, The Knight Templars and Masons' Life Indemnity Company, enters in said circuit court, of the United States, on or before the first day of the next term thereof, a copy of the record in the above-entitled suit and pays all costs that may be awarded by said circuit court of the United States against it if said court shall hold that such suit was wrongfully or

improperly removed thereto, and shall appear and enter special bail in such suit if such special bail was originally requisite therein,
84 then this obligation to be void; otherwise to remain in full force and effect.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY.
[SEAL.] By HERVEY B. HICKS, *Its Attorney-in-fact.*
WILLIAM H. GRAY.

Sealed and delivered in the presence of
A. N. HISLOP.

ROSA B. JARMAN, Plaintiff,
vs.
KNIGHT TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Defendant.

Defendant's petition and bond for removal taken up by the court and seen and heard and bond approved and prayer of petitioner granted, it is therefore ordered and adjudged by the court that the State court proceed no further herein but that this cause be and the same is hereby removed to the United States circuit — of the western division of the western district of the State of Missouri, and that defendant herein cause a transcript of the proceedings herein to be filed without delay in said United States court.

STATE OF MISSOURI, } ss:
County of Grundy, }

I, A. U. Spickard, clerk of the circuit court in and for said county, hereby certify the above and foregoing to be a full, true and complete transcript of all the proceedings had in our said court, in the above-entitled cause, as fully as the same appears on file and of record in my said office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Trenton, in said county, this first day of March, 1899.

[SEAL.] A. U. SPICKARD,
Clerk of the Circuit Court.

Thereafter, to wit, on the 21st day of April, A. D. 1899, a stipulation was filed in the above-entitled cause.

Said stipulation is in words and figures as follows, to wit:

85 The Circuit Court of the United States, Western Division of the Western District of Missouri.

ROSA B. JARMAN, Plaintiff,
vs.
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY OF Illinois, a Corporation, Defendant.

It is hereby stipulated by and between the parties hereto, by their respective attorneys, that all pleadings which would be otherwise re-

quired herein are hereby waived until such time as an agreed statement of facts between the parties shall be settled and filed, or in case of a disagreement about the statement of facts, the defendant shall have the usual time for answer after notice from the plaintiff that it will be impossible to agree upon a statement of facts.

HARBER & KNIGHT,
Attorneys for Plaintiff.
HERVEY B. HICKS,
Attorney for Defendant.

* * * * * * *

86 (*Appearance for Plaintiff in Error.*)

And on the twentieth day of October, A. D. 1899, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois, a Corporation, Defendant, Plaintiff in Error,
vs.
ROSA B. JARMAN, Plaintiff, Defendant in Error.

The clerk will enter my appearance as counsel for plaintiff in error.

Dated October 18th, 1899.

HERVEY B. HICKS,
1306 *Masonic Temple, Chicago, Ill.*

(Endorsed:) No. 1347. United States circuit court of appeals for the eighth circuit. Knights Templars and Masons' Life Indemnity Co., pl'ff in error, *vs.* Rosa B. Jarman, def't in error. Appearance. Filed Oct. 20, 1899. John D. Jordan, clerk. Hervey B. Hicks, 1306 Masonic temple, Chgo., att'y for pl'ff in error.

(*Appearance for Plaintiff in Error.*)

And on the thirtieth day of March, A. D. 1900, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1899.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Plaintiff in Error, *vs.* ROSA B. JARMAN. } No. 1347.

87 The clerk will enter my appearance as counsel for the plaintiff in error.

SAMUEL P. HUSTON,
By H. B. H.

(Endorsed.) U. S. circuit court of appeals, eighth circuit. December term, 1899. No. 1347. Knights Templars & Masons' Life Indemnity Company, plaintiff in error, *vs.* Rosa B. Jarman. Appearance. Filed Mar. 30, 1900. John D. Jordan, clerk. Samuel P. Huston, St. Joseph, Mo., counsel for pl'ff in error.

(*Appearance for Defendant in Error.*)

And on the twenty-first day of November, A. D. 1899, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error, *vs.* ROSA B. JARMAN. } No. 1347.

The clerk will enter *my* appearance as counsel for the defendant in error.

E. M. HARBER.
A. G. KNIGHT.

HON. F. H. BACON, *Of Counsel.*

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1899. No. 1347. Knights Templars and Masons' Life Indemnity Company, plaintiff in error, *vs.* Rosa B. Jarman. Appearance. Filed Nov. 21, 1899. John D. Jordan, clerk. F. H. Bacon, E. M. Harber, A. G. Knight, counsel for def'd't in error.

(*Argument Commenced.*)

And on the tenth day of May, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an entry in said cause, in the words and figures following, to wit:

88 United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

THURSDAY, *May* 10, 1900.

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error,
vs.
ROSA B. JARMAN. } No. 1347.

In error to the circuit court of the United States for the western district of Missouri.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Hervey B. Hicks for plaintiff in error, and the hour of adjournment having arrived further argument was postponed until tomorrow.

(*Order of Submission.*)

And on the eleventh day of May, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order of submission, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

FRIDAY, *May* 11, 1900.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error,
vs.
ROSA B. JARMAN. } No. 1347.

In error to the circuit court of the United States for the western district of Missouri.

This cause having been called for further hearing argument was continued by Mr. Hervey B. Hicks for plaintiff in error, by Mr. F. H. Bacon for defendant in error and concluded by Mr. Hervey B. Hicks for plaintiff in error.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

89 (*Opinion.*)

And on the fifteenth day of October, A. D. 1900, an opinion of said United States circuit court of appeals was filed, in said cause, in the words and figures following, to wit:

90 United States Circuit Court of Appeals, Eighth Circuit. May Term, A. D. 1900.

THE KNIGHTS TEMPLARS AND MASONS' Life Indemnity Company, Plaintiff in Error,
vs.
ROSA B. JARMAN, Defendant in Error.

No. 1347. In Error to the Circuit Court of the United States for the Western District of Missouri.

Mr. H. B. Hicks and Mr. Samuel P. Huston for the plaintiff in error.

Mr. F. H. Bacon (Mr. E. M. Harber and Mr. A. G. Knight were with him on the brief) for the defendant in error.

Before Caldwell, Sanborn, and Thayer, circuit judges.

THAYER, circuit judge, delivered the opinion of the court.

This action is founded on a certificate of membership issued by the Knights Templars and Masons' Life Indemnity Company, the plaintiff in error, to John P. Jarman, by the terms of which a certain sum of money hereafter mentioned was payable to Rosa B. Jarman, the wife of John P. Jarman, on the death of the latter. The plaintiff in error will be hereafter designated as the defendant or the defendant company. The certificate was issued and delivered on October 25, 1885. When it was issued the constitution or by-laws of the defendant company, which were endorsed on the back of the certificate, provided "that a policy of membership for $5,000 shall be good for all money in the death fund arising from one assessment; provided it shall not exceed $5,000, and all the money paid on the policy in assessments" and Jarman's certificate declared on its face that the defendant company would pay "to Rosa B. Jarman, wife, the children or heirs of said member, and in the order named * * * the sum of five thousand dollars, and all the money paid on the policy in assessments subject to the limitation as to the amount of such payment as is provided in section one (1) of article seven (7) of the constitution on the back of this policy." By an amendment to the constitution or by-laws which was adopted on January 8, 1889, the
91 company limited its liability to refund all assessments that might have been paid to such as were paid "for the first five years" of membership; and by later amendments which were made respectively on February 20, 1894, and January 14, 1896, it exempted itself from liability to refund any assessments or to pay any greater sum than the principal sum specified on the face of its certificates. The certificate of membership, when issued, contained a provision that the policy should become null and void "in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane," and it was stipulated that John P. Jarman, the deceased member, committed suicide on September 12, 1898, "while insane to such an extent as to be incapable of understanding the nature or consequences of his act, * * * by a gunshot wound inflicted by himself." When sued upon its policy

the defendant company interposed two defenses. First, it asserted that it was not liable on its policy for any amount because Jarman took his own life; second, it contended that even if it was liable for the face of its policy, to wit, for the sum of $5,000, it was not liable for the amount of assessments which the deceased member had paid, and which it had originally agreed to refund, because of the aforesaid amendments made to its constitution on February 20, 1894, and January 14, 1896. Both of these contentions were overruled by the trial court, 95 Fed. Rep. 70, and the case is now before this court for review.

In the case of Knights Templars and Masons' Life Indemnity Company *v.* Berry, 4 U. S. App. 353, 50 Fed. Rep. 511, it was held by this court, affirming the decision of Judge Caldwell on the circuit (Berry *et al. v.* Knights Templars' and Masons' Life Indemnity Company, 46 Fed. Rep. 439), that a certificate or policy of insurance which was executed by the defendant company and delivered in the State of Missouri to a citizen of that State prior to 1887, and was in the same form substantially as the policy now under consideration, was a Missouri contract and a policy of insurance, and that being such it was subject to the provisions of section 5855 of the Revised Statutes of Missouri 1889, which declares, in substance, that in suits on policies of insurance on life, issued by any company doing business in the State of Missouri, it shall be no defense that the insured committed suicide unless it is shown to the satisfaction of the court or jury trying the case that the insured contemplated committing suicide at the time he made his application for the policy, and that any stipulation in a life-insurance policy to the contrary shall be void. The correctness of that view is not challenged on the present occasion, and as the policy in suit was issued to a citizen of Missouri and delivered to him in that State and the initial assessment there paid, it follows that when the policy was delivered it covered the risk of suicide by virtue of the local statute. On March 30, 1887, nearly two years after the policy in suit was issued, the legislature of the State of Missouri enacted a law with reference to insurance companies doing business on the assessment plan, which now appears in the Revised Statutes of that State for the year 1889 as article 3 of chapter 89, being sections 5860 to 5872, both inclusive. This act placed foreign insurance companies doing business in the State on the assessment plan under the supervision of the insurance department of
92 the State, and one section thereof, being section 5869, subjected such foreign assessment companies to all the provisions of section 5912 of the Revised Statutes of Missouri for 1889, which was then in force, but concluded with the following proviso: "Provided, always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth." Section 5912, to which reference was thus made, related wholly to the mode of obtaining service on foreign insurance companies doing business within the State of Missouri, and it is accordingly claimed that the operation of the proviso

was to relieve insurance companies doing business on the assessment plan, as distinguished from companies doing business in other ways, from the disability imposed by section 5855 to plead suicide as a defense, inasmuch as section 5855 forms a part of the general insurance laws of the State and was not incorporated into the act of March 30, 1887, relating to assessment companies.

It is by no means certain that the proviso in question was intended by the law-maker to exempt assessment companies from the operation of section 5855. The legislature did not see fit to repeal that section, but left it standing and in full force as a part of the statute law of the State, at least in so far as it affected ordinary life companies, and it is difficult to assign any reason for prohibiting companies of the latter kind from pleading the defense of suicide which does not apply with equal force to assessment companies. It has been held, however, in Haynie *v.* Knights Templars and Masons' Life Indemnity Company, 139 Mo. 416, that from the date of its adoption the proviso did exempt assessment companies from the operation of section 5855 and enable them to plead suicide as a defense to policies thereafter issued which by their terms excluded the risk of death by suicide. Accepting that as an interpretation of a local law by the highest court of the State which this court is required to adopt, we pass to the inquiry whether it was competent for the legislature by the proviso in the act of March 30, 1887, to relieve the defendant company from the operation of section 5855 as respects policies theretofore issued and then outstanding which were clearly subject to its provisions when they were issued.

In considering this question it must be borne in mind that section 5855 not only provides that in suits on life-insurance policies issued by companies doing business in the State of Missouri it shall be no defense that the insured committed suicide, but also declares that "any stipulation in the policy to the contrary shall be void." The effect of this statute upon the policy in controversy was to expunge the provision which is found therein in substance, that it should become null and void if Jarman took his own life either sane or insane. The contract by force of the statute took effect as it would have done if no such clause as that last referred to had been inserted, and embraced the risk of death by suicide as well as from other causes. Moreover, in legal contemplation the first and all subsequent premiums or assessments were paid by the insured in consideration of the assumption by the insurer of the risk of death by suicide, as well as from other causes, since the statute rendered
93 the agreement to the contrary utterly meaningless and nugatory. In this way the statute was worked into the contract and became a part of it and determined its meaning, scope and effect. In the light of the statute the parties must be presumed to have agreed that the insurer would assume the risk of death by suicide because the law would not permit them to agree otherwise. We are of opinion, therefore, that it was not within the power of the legislature to declare in 1887 with respect to the policy in suit and others of a like character that self-destruction might be pleaded as a defense, which was tanta-

mount to saying that the policy should not comprehend the risk of death by suicide, because a legislative enactment to that effect would impair the obligation evidenced by the policy, contrary to the mandate of the Federal and the State constitution. Constitution of Missouri, sec. 15, art. 2, R. S. of Mo., 1889, p. 59. In so holding we have not overlooked the decision in Ewell *v.* Daggs, 108 U. S. 142, upon which much reliance is placed by the defendant company, but we are of the opinion that the doctrine of that case is not applicable to the one at bar. In Ewell *v.* Daggs a purely statutory defense existing under the usury laws of a State when a certain contract for the loan of money was entered into, was taken away by a subsequent constitutional amendment, and it was held in substance that such repeal did not impair the obligation of the contract. The court in that case regarded the usury law that had been repealed as in the nature of a penal statute inflicting a penalty upon the lender which any subsequent legislature could repeal and thereby remit the penalty. It also said, in substance, that the borrower in such case had no right to complain of the remission of the penalty, because it was not imposed for his benefit, but rather for the benefit of the public, and furthermore, that the usury statute conferred a privilege which belonged to the remedy and formed no element in the rights that inhered in the contract. This reasoning, we think, is entirely inapplicable to the case in hand because, as we have heretofore shown, the Missouri statute, section 5855, operated to enlarge the scope of the policy and make it comprehend risks that but for the statute would not have been within its provisions.

While on this branch of the case another point will be noticed briefly, simply because it is insisted upon in the argument that was made in behalf of the defendant company. It is said that by a long line of adjudications prior to the adoption of the Missouri statute excluding the defense of suicide, it had been determined that the words "committed suicide," as used in insurance policies, meant "a voluntary act when a person was in the possession of his ordinary reasoning faculties;" that the words "committed suicide" are used in that sense in section 5855, and being so used that the statute is not broad enough to cover the present case because it is stipulated that Jarman took his own life "while insane to such an extent as to be incapable of understanding the nature or consequences of his act." A proper degree of respect for the legislature requires us to overrule this contention, since it is not probable that any legislative body in its right mind would declare that insurance companies shall not be allowed to make the defense of suicide if the insured takes his life when in the full possession of all his reasoning faculties, but may make it whenever it is claimed that he took his life while insane. In view of the many long and embarrassing trials that had taken place in actions upon insurance policies to determine the mental state of the deceased at the time he took his own life and the difficulty in many cases of determining that issue with any approach to accuracy, it was deemed best to exclude the defense of suicide altogether in such actions. The statute was doubtless prompted by that view and whether it be regarded as wise or

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unwise, it was competent for the legislature to enact it and we have no doubt that the words "committed suicide" were used in a popular sense to comprehend the act of self-destruction without reference to the mental state of the actor.

We have next to determine whether the amendments to the defendant's constitution of date January 8, 1889, February 20, 1894, and January 14, 1896, whereby it expunged those provisions of its constitution which obligated it on the death of a member to refund "all money paid on the policy in assessments," have the effect of depriving the plaintiff of the right to recover the assessments paid on the policy in controversy and of limiting her right of recovery to the principal sum therein mentioned. The argument in favor of giving the amendments such effect as is last described is based wholly on the concluding paragraph of Jarman's application for the policy, which is as follows: "I further agree, if accepted, to abide by the constitution, rules and regulations of the company as they now are, or may be constitutionally changed hereafter." Conceding, in accordance with the stipulation of the parties, that the amendments in question were adopted legally in the manner prescribed by the defendant's constitution and by-laws, we observe in the first instance that there is nothing to indicate that the amendments were intended to have a retrospective operation and reduce the amount payable on certificates or policies like the one at bar, which was then outstanding, and in plain language obligated the company to refund all assessments that might be paid thereon. The present record contains no evidence which shows affirmatively that the amendments were intended to operate retrospectively and extinguish the obligation to refund assessments that had been expressly assumed, while the fact that outstanding policies were not recalled and the promise to refund assessments expunged or erased from the face of such policies, fairly indicates, we think, that the amendments were designed to operate prospectively on policies thereafter executed. Aside from this view of the case it is a well-established rule for the construction of statutes that they should be so interpreted as to give them a prospective operation only, unless it is manifest that they were intended to operate retrospectively, and no reason is perceived why the same rule of construction should not apply to the legislative acts of a private corporation. If it assumes to amend its constitution or by-laws and the amendment is in such form that if given a retrospective effect it will alter obligations which the company has assumed by existing contracts, it should be presumed, unless there are imperative reasons to the contrary, that it was not intended to have such effect but was only intended to prescribe a rule of action for the future. Carnes *v.* Iowa Travelling Men's Association, 76 N. W. Rep. (Ia.) 683, Wist *v.* Grand Lodge A. O. U. W., 22 Ore. 271; Endlich on Interpretation of Statutes, sec. 273; Sutherland on Statutory Construction, sec. 464.

In the second place we observe that it is not a reasonable interpretation of the clause above quoted from the application that
95 the applicant intended to assent in advance to any changes in its constitution and by-laws which the company saw fit to

make, even if they reduced the amount of indemnity which the company had promised to pay in the event of his death and thereby lessened the value of his policy. He was to occupy a dual relation to the company, first, as one of its members, and second, as any other individual having a contract with it. In the former relation he was willing to be bound by any lawful amendment to the company's constitution and by-laws that the members collectively saw fit to adopt which concerned the government of the corporation or the mode of transacting its business and did not impair any of the essential provisions of his contract. He probably foresaw that in course of time the company might find it expedient to make some changes in its method of corporate government or in the mode of transacting its business or in its rules of discipline, and he doubtless intended to assent to all amendments of the constitution and by-laws which were framed for that purpose and would not deprive him of any substantial right or benefit secured by his policy. It is not reasonable, however, to suppose that he intended to agree in advance that the company might at any time reduce the promised indemnity to any sum which it found it convenient to pay. The liberal indemnity that was promised by the policy as first drawn may have been, and probably was the inducing cause which led Jarman to become a member of the defendant company and it would be unreasonable to infer that he intended to agree that after he had paid assessments upon his policy for a period of years the consideration that had induced him to pay the same might be withdrawn in whole or in part without his consent. The record contains no evidence that the deceased member voted for any of the amendments now in question or was aware of their adoption during his lifetime. And even if it did appear that he voted for the amendments and was aware of their adoption, the presumption would be that he did so in the belief that the amendments operated prospectively and not retrospectively upon antecedent contracts. All contracts, notwithstanding the general words or phrases which they may contain, should receive an interpretation which will accord with the presumed intention of the contracting parties and will not work an injustice or lead to absurd consequences. United States *v.* Kirby, 7 Wall. 482; Church of the Holy Trinity *v.* United States, 143 U. S. 457, 461; Liverpool & London & Globe Ins. Co. *v.* Kearney, 36 C. C. A. 265, 94 Fed. Rep. 314. Applying that rule of interpretation we are unable to give to the clause found in Jarman's application a construction that would enable the defendant company by a simple amendment to its constitution or by-laws to repudiate a stipulation contained in the policy which in the estimation of the policyholder most likely gave to it its chief value.

The views which we have expressed are in accordance with the conclusion heretofore reached by several other courts, including the trial court, with respect to the same or kindred questions. Hale *v.* Equitable Aid Union, 168 Pa. St. 377; Wist *v.* Grand Lodge A. O. U. W., 22 Oregon, 271; Weiler *v.* Equitable Aid Union, 92 Hun. 277;

The Grand Lodge of the Ancient Order of United Workmen
96 *v.* Sater, 44 Mo. App. 445, 452, 453; Voight *v.* Kersten, 164 Ill. 314; Startling *v.* Supreme Council Royal Templars of Temperance, 108 Mich. 140; Smith *v.* Supreme Lodge of the Knights of Pythias, —— Mo. App. ——, (not yet reported) and cases there cited. The judgment below awarding the plaintiff the full amount of the indemnity promised by the policy is accordingly affirmed.

SANBORN, circuit judge, dissenting:

Section 5855 of the Revised Statutes of Missouri, 1889, provides that "in all suits upon policies of insurance on life hereafter issued by any company doing business in this State it shall be no defense that the insured committed suicide unless" a state of facts, not claimed to exist in this case, conditioned the making of the application for insurance. The parties to this suit have stipulated that the insured "while insane to such an extent as to be incapable of understanding the nature or consequences of his act took his own life" and that if section 5855 did "not operate against the defendant company as to this action, the defendant company is relieved from the payment of the policy aforesaid by the self-destruction of John P. Jarman" except to the extent of the repayment of his assessments which amount to $811.83.

Section 5855 prohibited the defense that the insured committed suicide, but it left all other legal and equitable defenses unaffected. Is the defense that the insured "while insane to such an extent as to be incapable of understanding the nature or consequences of his act took his own life" a defense that he committed suicide? If it is, it is prohibited by the statute. If it is not, the statute does not operate upon it, and under the express stipulation of the parties the amount of the plaintiff's recovery should be limited to $811.83. The statutes of the State of Missouri provide that "words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases, having a peculiar and appropriate meaning in law, shall be understood according to their technical import." Revised Statutes of Missouri, 1889, § 6570. What is the plain, ordinary and usual meaning of the words "committed suicide?" Does suicide here include, or does it exclude, the taking by a person of his own life while he is so insane that he is incapable of understanding the nature or consequences of his act? The definition of the word suicide in Webster's Dictionary reads in this way: "Suicide. The act of designedly destroying one's own life committed by a person of years of discretion and sound mind."

In Worcester's Dictionary it is thus defined: "Suicide. The slayer or slaying of one's self; self-murder; a self-murderer," and the definition in the Century Dictionary is: "Suicide. The act of designedly destroying one's own life." The plain, ordinary and usual sense of a word or phrase cannot always be safely evolved from the inner consciousness of any one, and perhaps no better evidence of this meaning of the word "suicide" could be presented than the definitions of these standard and popular dictionaries. Not one of these definitions includes the act of one who is so insane that he is inca-

pable of understanding the nature or consequences of the thing
97 he is doing. In all of them the intent and design of the sound mind is an indispensable element. Under these interpretations a taking of one's life without the design of a sound mind is not suicide and one who is so insane that he does not understand the nature or consequences of his act cannot be said to designedly or intentionally do that act. The plain or ordinary sense of the words "committed suicide," therefore, does not include the taking of his life by one who is so insane that he does not understand the nature or consequences of his act.

Moreover, in the statute under consideration the words "committed suicide" were legal, technical terms used to describe and define the basis of a defense to an action at law and having an appropriate meaning in the law. It is a settled rule of construction that in interpreting the statutes of a State the Federal courts follow the rules of construction enacted by its legislature or announced by its courts, and if this rule is to be observed in the interpretation of section 5855 the words "committed suicide," in that section must be understood according to their legal, technical import. In the year 1872 the Supreme Court of the United States declared and the consensus of judicial opinion in England and America, while differing on other questions, always has been and is that "suicide" or "death by one's own hand" (and the two terms are declared by the Supreme Court to be interchangeable in Bigelow *v.* Berkshire Life Ins. Co. 93 U. S. 284, 286) does not include or describe the taking of his life by one who is insane to such an extent that he does not understand the nature or consequences of his act. Life Ins. Co. *v.* Terry, 82 U. S. 580, 591; Insurance Co. *v.* Rodel, 95 U. S. 232; Scheffer *v.* National Life Ins. Co., 25 Minn. 534, 537; Breasted *v.* Farmers' Loan & Trust Co., 4 Hill, 73; Newton *v.* Ins. Co., 76 N. Y. 426; Estabrook *v.* Union Mutual Life Ins. Co., 54 Me. 224; Phadenhauer *v.* Insurance Co., 7 Heiskell, 567; Insurance Co. *v.* Isett, 74 Pa. St. 176; Connecticut Mutual Life Ins. Co. *v.* Groom, 86 Pa. St. 92, 96; Merritt *v.* Ins. Co., 55 Ga. 103; Life Association of America *v.* Waller, 57 Ga. 533; Phillips *v.* Louisiana Equitable Life Ins. Co., 26 La. Ann. 404; Cook on Life Insurance, § 42.

Many other authorities to like effect might be cited and none have been found which hold that the taking of his life by one who is so insane that he is incapable of understanding the nature and consequences of his act is the commission of suicide. These decisions establish the proposition that the word "suicide" in its technical legal meaning does not include the taking of his life by one who is insane to the extent stipulated in this action. The result is that the words "committed suicide" do not, either in their plain, usual, ordinary sense or in their technical, legal import include or cover the taking of his life by one who is insane to such an extent that he is incapable of understanding the nature or consequences of his act. From these premises the logical conclusion is to my mind irresistible that the defense that "while insane to such an extent as to be incapable of understanding the nature or consequences of his act" the insured took his life, is not a defense that he committed

suicide. For this reason section 5855 does not operate upon or affect this action and under the stipulation of the parties the amount of the plaintiff's recovery should be limited to $811.83.

98 The presumption of fact and of law is that the legislature of the State of Missouri when it enacted this section we have been considering knew the plain, ordinary sense of the words "committed suicide," that they knew the technical, legal meaning which repeated judicial decisions had given to these words and that they were familiar with the established rule of law and of the statute of their State that the words must be interpreted in accordance with this plain meaning and this technical import. The imputation to the members of this body of ignorance or of disregard of the meaning of these words and of this settled rule of construction is forbidden by a proper degree of respect for that legislative body. The defense of the company that the insured took his own life while insane should be sustained and the recovery should be limited to the amount of the assessments which the insured paid to the company.

Filed October 15, 1900.

99 (*Judgment.*)

And on the fifteenth day of October, A. D. 1900, in the record of the proceedings of said circuit court of appeals is a judgment, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

MONDAY, *October* 15, 1900.

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error,
vs.
ROSA B. JARMAN. } No. 1347.

In error to the circuit court of the United States for the western district of Missouri.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that Rosa B. Jarman have and recover against the Knights Templars and Masons' Life Indemnity Company the sum of twenty dollars for her costs herein and have execution therefor.

October 15, 1900.

100 (*Petition for Rehearing.*)

And on the thirtieth day of November, A. D. 1900, a petition for rehearing was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

101 In the United States Circuit Court of Appeals for the Eighth Circuit, May Term, A. D. 1900.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Plaintiff in Error,
vs.
ROSA B. JARMAN, Defendant in Error. } No. 1347.

Petition for Rehearing and Brief in Support Thereof.

Petition for rehearing.

The Knight Templars and Masons' Life Indemnity Company, by Hervey Bryan Hicks, its attorney, respectfully petitions the court to grant a rehearing herein, for the reason that manifest errors appear in the opinion of the court filed herein, in this, to wit:

First. The court erred in holding that the self-destruction of the insured "while insane to such an extent as to be incapable of understanding the nature or consequences of his own act," was a defense that the insured "committed suicide," and was prohibited by the terms of sec. 5855 R. S. Mo., 1889.

102 Second. The court erred in holding that sec. 5855 (R. S. Mo., 1889) worked into and became a part of the contract between the insured and the company.

Third. The court erred in holding that "it was not within the power of the legislature to declare in 1887 with respect to the policy in suit that self-destruction might be pleaded as a defense in an action upon said policy because a legislative enactment to that effect would impair the obligation evidenced by the policy contrary to the State and Federal Constitutions."

Fourth. The court erred in holding that the amendments to the constitution or by-laws of the plaintiff in error did not become a part of the contract or the policy in suit.

Fifth. The court erred in holding that the changes in the constitution or by-laws lessened the value of the policy in question.

Sixth. The court erred in holding by inference, if not expressly, that the amendments to the constitution, if applied to the contract of Jarman, "impaired any of its essential provisions," or "deprived him of any substantial right or benefit secured by his policy."

Seventh. The court is respectfully urged in the consideration of this question of the amendments to take cognizance of the application of said amendments to the contracts of all the members, the effect of now superseding the construction which has been followed for years by the construction the court has adopted in its opinion, upon all the members of the defendant company, and whether such construction if applied will tend to preserve or to destroy the society.

For which reasons the petitioner prays that it may be
103 granted a rehearing, and that the opinion heretofore filed may be set aside and held for naught.

HERVEY BRYAN HICKS,
Attorney for Petitioner.

S. S. GREGORY, *Of Counsel.*

We, S. S. Gregory and Hervey Bryan Hicks, of counsel for the plaintiff in error herein, do hereby certify that in our judgment the foregoing petition for a rehearing is well founded, and that the same is not interposed for delay.

S. S. GREGORY,
HERVEY BRYAN HICKS.

Filed Nov. 30, 1900.

JOHN D. JORDAN, *Clerk.*

104 (*Order Denying Petition for Rehearing.*)

And on the seventeenth day of December, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order denying the petition for rehearing in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1900.

MONDAY, *December* 17, 1900.

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error,
vs.
ROSA B. JARMAN.
No. 1347.

In error to the circuit court of the United States for the western district of Missouri.

This cause came on this day to be heard upon the petition for a rehearing filed by counsel for the plaintiff in error.

On consideration whereof, it is now here ordered by this court, that said petition for a rehearing of this cause be, and the same is hereby denied.

December 17, 1900.

105 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing one hundred and four pages contain a true copy of the portions of the transcript of the record printed pursuant to the stipulation of the parties and upon which said cause was heard, together with the transcript of record from the circuit court of Grundy county, Missouri, and the stipulation as to time for pleading, etc., filed in the circuit court of the United States, which were omitted from the printed record by stipulation of the parties, and full, true and complete copies of all the proceedings and record entries, including the opinion of said circuit court of appeals, in a certain cause wherein The Knights Templars and Masons' Life Indemnity Company was plaintiff in error, and Rosa B. Jarman was defendant in error, No.

1347, May term, 1900, as fully as the same remain on file and of record in my office.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this nineteenth day of January, A. D. 1901.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

106 [Endorsed:] File No. 18055. U. S. C. C. of appeals, 8th circuit. Term No. 254. The Knights Templars and Masons' Life Indemnity Company, petitioner, *vs.* Rosa B. Jarman. Filed February 18, 1901.

107 In the United States Circuit Court of Appeals for the Eighth Circuit.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error, *v.* ROSA B. JARMAN, Defendant in Error.	No. 1347.

Whereas a writ of certiorari has been heretofore issued on the 11th day of March, 1901, directed to the honorable, the judges of the United States circuit court of appeals for the eighth circuit, directing them to send, without delay, to the Supreme Court, the record and proceedings in the above-entitled case, so that the said Supreme Court may act thereon as of right and according to law ought to be done,

It is hereby stipulated and agreed between the parties hereto, by their respective attorneys, that the certified transcript of record in the above-entitled case, which is now on file in the Supreme Court of the United States, may be taken as a return to the said writ of certiorari.

Dated, Chicago, March 14th, 1901.

HERVEY BRYAN HICKS,
Attorney for Plaintiff in Error.

(Signed) HARBER & KNIGHT &
FREDERICK H. BACON,
Attorneys for Defendant in Error.

[Endorsed:] Copy. No. 1347. United States circuit court of appeals, eighth circuit. Knights Templars & Masons' Life Indemnity Co., plaintiff in error, *v.* Rosa B. Jarman, defendant in error. Stipulation. Filed March 16, 1901. John D. Jordan, clerk. Hervey Bryan Hicks, attorney for plaintiff.

108 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The Knights Templars and Masons' Life Indemnity Company is plaintiff in error, and Rosa B. Jarman is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the western district of Missouri, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and
109 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of March, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 18,055. Supreme Court of the United States. No. 254, October term, 1901. The Knights Templars & Masons' Life Indemnity Co., *vs.* Rosa B. Jarman. Writ of certiorari and return. Filed Mar. 18, 1901. Filed Mar. 16 1901 John D. Jordan, clerk.

110 *Return to Writ.*

UNITED STATES OF AMERICA, }
Eighth Circuit, } *ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of The Knights Templars and Masons' Life Indemnity Company, plaintiff in error, *vs.* Rosa B. Jarman, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in St. Louis, Missouri, this sixteenth day of March, A. D. 1901.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1900.

Knights Templars and Masons Life Indemnity Company, *Petitioner,* *vs.* Rosa B. Jarman, *Respondent.*	Petition for writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit.

To Messrs. F. H. Bacon, E. M. Harber and A. G. Knight, Counsel for Respondent:

GENTLEMEN.—You will please notice that on Monday, the 4th day of March, 1901, or as soon thereafter as counsel can be heard, we shall submit in this court a motion that a writ of *certiorari* issue herein to the United States Circuit Court of Appeals for the Eighth Circuit, in accordance with the prayer of the petition, of which and of said motion and brief in support thereof a copy is herewith furnished you. Yours, etc.

HERVEY BRYAN HICKS,
S. S. GREGORY,
Attorneys for Petitioner.

Received copy of above notice, motion, petition and brief this 11th day of February, 1901.

HARBER AND KNIGHT,
FREDERICK H. BACON,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1900.

Knights Templars and Masons Life Indemnity Company, *Petitioner,* *vs.* Rosa B. Jarman, *Respondent.*	Petition for writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit.

And now comes the above named petitioner, by Hervey Bryan Hicks and S. S. Gregory, its attorneys, and submits herewith its petition for a writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit, requiring that court to certify to this court for its review and determination the case of Knights Templars and Masons Life Indemnity Company, plaintiff in error, against Rosa B. Jarman, defendant in error, and moves that a writ of *certiorari* may be awarded as therein prayed.

HERVEY BRYAN HICKS,
S. S. GREGORY,

Attorneys for Petitioner, Knights Templars and Masons Life Indemnity Company.

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1900.

Petition by plaintiff in error for a writ of *certiorari* from the Supreme Court directed to the United States Circuit Court of Appeals for the Eighth Circuit, requiring that court to certify to the Supreme Court the case of Knights Templars and Masons Life Indemnity Company, plaintiff in error, against Rosa B. Jarman, defendant in error.

To the Supreme Court of the United States:

The petitioner, the Knights Templars and Masons Life Indemnity Company, plaintiff in error, as above mentioned, respectfully represents:

That on the 19th day of January, in the year 1899, Rosa B. Jarman brought her action at law in the Circuit Court of Grundy County, Missouri, against this petitioner to recover as beneficiary in a policy of insurance issued by petitioner upon the life of John P. Jarman, and dated October 24, 1885.

That petitioner, when said suit was brought, being a citizen of Illinois, and said Rosa B. Jarman then being a citizen of Missouri, and claiming to recover in her said suit more than two thousand ($2,000) dollars exclusive of interest and costs, petitioner being defendant therein, and having its domicile in Illinois, applied to remove the said cause to the Circuit Court of the United States for the Western District of Missouri; and upon such application such proceedings were had that, upon the ground of such diversity of citizenship, the said cause was removed to the said Circuit Court of the United States, and there tried and determined.

That final judgment was rendered in said cause June 26, A. D. 1899, in favor of said Rosa B. Jarman and against petitioner for the sum of six thousand and thirteen dollars and thirty cents ($6,013.30), besides costs of suit.

Thereafter petitioner, defendant in that suit, sued out and served a writ of error from the said Circuit Court of Appeals for the Eighth Circuit to reverse said judgment, and caused a citation to be duly signed and served, in pursuance of which a copy of the record of said cause was duly filed and now remains in the office of the Clerk of said Circuit Court of Appeals.

And that such proceedings were thereupon had in said Circuit Court of Appeals, that thereafter and on the 15th day of October, A. D. 1900, the judgment of the said Circuit Court of the United States for the Western District of Missouri was by said Circuit Court of Appeals affirmed.

That petitioner thereafter duly filed a petition for rehearing, which was overruled and denied December 17th, A. D. 1900.

That inasmuch as the jurisdiction of the said Circuit Court was invoked only upon the ground of the diverse citizenship of the parties, the said judgment of the said Circuit Court of Appeals is final.

That this petitioner ventures respectfully to suggest to this court the following considerations arising out of the facts and history of this cause in support of petitioner's application.

The case was tried by the court without a jury under a written stipulation which also stipulated the facts in the case.

It thus appeared that John P. Jarman, the insured, while insane to such an extent as to be incapable of understanding the nature or consequences of his act, took his own life on the 12th of September, 1898. The policy in suit contained a clause providing that in case of the self-destruction of the holder of the policy, whether vol-

untary or involuntary, sane or insane, the policy should be void, with a *proviso* that in case of suicide the Company should pay to the persons entitled under the policy the amount of the assessments theretofore paid by the insured without interest, the company being a co-operative or assessment company organized under the laws of Illinois, and the policy being an assessment policy.

It was contended, however, by the plaintiff, Mrs. Jarman, that this clause in the contract of insurance was inoperative on account of the following provision of the statutes of Missouri:

> "In all suits upon policies of insurance on life hereafter "issued by any company doing business in this state, it shall "be no defense that the insured committed suicide, unless it "shall be shown to the satisfaction of the court or jury trying "the case that the insured contemplated suicide at the time he "made his application for the policy, and any stipulation in the "policy to the contrary shall be void."—Revised Statutes of "Missouri, 1879, Sec. 5982 (afterwards Sec. 5855 Rev. Stats. "1889).

The policy was written in 1885, while this statute was in force. There then was no law in Missouri expressly applicable to assessment insurance companies; but in 1887 the Legislature of that state passed an act for the incorporation and regulation of such societies, including also in its provisions the regulation of companies incorporated in other states, and providing that no corporation doing business under that act should be subject to any other provisions or requirements of the general insurance laws of the state.

Sec. 10, Act of 1887, now Sec. 5869 Rev. Sts. 1889.

The petitioner complied in all respects with this statute, and in a case to which it was a party the Supreme Court of Missouri decided that assessment insurance companies were thus withdrawn

from the operation of the general insurance laws of the state and were governed only by the provisions of the special law of 1887.

Haynie v. *Indemnity Co.*, 139 Mo., 416.

As that act contained no such provision prohibiting an insurance company from defending on the ground that the insured took his own life, where the policy stipulated that this should be a defense, the petitioner contended that this was, in effect as to assessment companies, a repeal of this provision of the act of 1879, and that, therefore, there was nothing to prevent the court from giving effect to the contract of the parties and holding that self-destruction was a defense.

But the Circuit Court of Appeals, or a majority of the Judges thereof, ruled that the act of 1879, being in force when the policy in suit was written, became so far a condition of the policy that if the Legislature thereafter repealed it such repeal could not be admitted to affect the contract of insurance without infringing upon Section 10, Article 1 of the Constitution of the United States, which provides, among other things, that no state shall pass any law impairing the obligation of contracts.

That is to say, the parties having entered into a contract, entirely valid except for the statute, and consistent with good morals, by which it was agreed that a certain risk should not be assumed by the insurer, and that death of the insured following from the excepted cause, the company's defense should prevail, the repeal of a statute prohibiting such defense, after the policy was issued but before any loss had occurred under it, could not be held to render the contract enforceable as the parties had made it, because thus the obligation of the contract would be impaired by subsequent legislation.

On this point the prevailing opinion contains this language:

"In the light of the statute, the parties must be presumed "to have agreed that the insurer would assume the risk of death "by suicide, because the law would not permit them to agree "otherwise. We are of opinion, therefore, that it was not within "the power of the Legislature to declare in 1887, with respect "to the policy in suit, and others of like character, that self-"destruction might be pleaded as a defense, which was tanta-"mount to saying that the policy should not comprehend the risk "of death by suicide, because a legislative enactment to that "effect would impair the obligation evidenced by the policy con-"trary to the mandate of the Federal and the State Constitu-"tions."

104 Fed. Rep., 641-2.

It is true that it was also contended by the plaintiff, Mrs. Jarman, that by act approved March 15, 1897, the Legislature of Missouri had expressly declared that the so-called suicide statute of 1879 should govern all foreign insurance companies. But the Court of Appeals entirely disregarded this contention, probably because the act of 1897 was, for reasons which will be stated in argument, invalid, through failure to comply with the constitution of Missouri in the method of its adoption.

It was also contended by the company that inasmuch as suicide means wilful self-destruction, whether taken in its popular meaning or in its technical legal significance, the defense interposed in this case was not the defense of suicide within the meaning of the statute, and, therefore, the statute was inapplicable. The parties here stipulated that the insured, "while insane to such an extent "as to be incapable of understanding the nature or consequences of "his act, took his own life, and came to his death on the 12th day "of September, 1898, by a gun-shot wound, inflicted by himself.

"It is not contended, however, by plaintiff, that said self-destruc-
"tion was the result of accident."

On this question Judge Sanborn dissented, and held that the judgment should be reversed and the recovery limited to the amount paid by the insured in assessments in accordance with a stipulation on that subject contained in the record.

Another defense interposed by the Company was this: The policy provided for the payment of five thousand ($5,000) dollars, and all the money paid on the policy in assessments, subject to certain limitations which will be presently noticed. The application of the insured on which the policy was issued was made a part thereof. That document was signed by the insured, and its concluding provision was as follows:

> "I further agree, if accepted, to abide by the constitution,
> "rules and regulations of the company, as they now are or may be
> "constitutionally changed hereafter."

The limitation on the promise to pay contained in the policy is found in Section 1, Article 7, of the Company's constitution printed on the back of the policy. That section, after prescribing the duty of the Board of Directors to pay within sixty (60) days after proof of death to designated beneficiaries the amount of the deceased member's policy, proceeds thus:

> "Provided that a policy of membership for five thousand
> "($5,000) dollars shall be good for all the money in the death
> "fund arising from one assessment; provided, it shall not ex-
> "ceed five thousand ($5,000) dollars and all the money paid
> "on the policy in assessments; and a certificate for four thou-
> "sand ($4,000) dollars shall be good for four-fifths of all the
> "money in the death fund arising from one assessment, pro-
> "vided it shall not exceed four thousand ($4,000) dollars and all
> "the money paid on the policy in assessments; and so on in the
> "same proportion as to all certificates."

Thereafter, on the 8th of January, 1889, the constitution was duly amended by vote of the members, not the directors as the learned Circuit Judge in his opinion persistently and inaccurately reiterates, limiting the recovery in respect of assessments to the amount of those paid for the first five years.

On February 20, 1894, it was in the same lawful method amended by eliminating the proviso in Section 1, Article 7, and on January 14, 1896, the constitution was further in like manner amended by repealing a section providing for indorsements on the policy of assessments paid thereon, and the payment of the amount thereof to the benficiary at death.

The effect was that in this case the company was liable if at all for the face of the policy only, provided these provisions were enforceable as against the policy in suit, which was issued before they were adopted.

This Company, petitioner herein, is a purely co-operative enterprise. It has no capital stock, and its management is absolutely directed by its members or policy holders. It has no means of meeting its losses except by assessments on its members. The larger the sum paid in losses the greater must be the amount raised by assessments. If the amount payable on certificates or policies is reduced the members get the benefits of such reduction in reduced assessments. The members, having agreed in advance to abide by any changes in the constitution, having themselves made such changes, the insured in this case, after notice of these changes, having continued to pay his assessments on the basis of the new arrangement, thus receiving its benefits, the petitioner respectfully submits that in the absence of any suggestion of fraud, bad faith or oppression on the part of the policy holders making these changes, of all which the record of this cause is quite barren, the beneficiary under the policy ought now to be regarded as bound by them.

The petitioner respectfully shows that it is vital and essential to assessment companies to have the right to readjust their arrangements with members in accordance with the results of their experience in the business of life insurance. That this company and such companies generally have no reserve fund, but take only so much from their members as is necessary to meet current losses; and when owing to lapse of time and increasing age of members, death losses increase, there must be heavier assessments or some diminution in benefits; and that it is for the members acting in accordance with their constitution to determine, as they did in this case, which alternative shall be chosen.

Your petitioner respectfully submits that the questions involved in this case are of wide general interest and importance. That many millions of assessment insurance are now outstanding throughout this country, and that every company engaged in that line of insurance and every member of such an insurance company is vitally interested in the questions involved in this case.

A certified copy of the entire record of the case in the Circuit Court of Appeals is furnished herewith to this court by this petitioner as part of the application.

Wherefore your petitioner respectfully prays that a writ of *certiorari* may issue out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding the said court to certify and send to this court by a day certain, therein to be designated, a full and complete transcript of the record and all proceedings taken or had in the said Circuit Court of Appeals in the said case therein of Knights Templars and Masons Life Indemnity Company, plaintiff in error, against Rosa B. Jarman, defendant in error, to the end that this case may be certified to this court for its review and determination as provided

in Section 6 of the act of Congress entitled, "An Act to establish "Circuit Courts of Appeals and to define and regulate in certain "cases the jurisdiction of the courts of the United States and for "other purposes. Approved March 3, 1891," and that your petitioner may have such other and further relief or remedy in the premises as to this court may seem appropriate and in conformity with law.

And your petitioner will ever pray, etc.

KNIGHTS TEMPLARS & MASONS LIFE INDEMNITY COMPANY OF ILLINOIS.

By HERVEY BRYAN HICKS,
S. S. GREGORY,
Its Attorneys.

THE PETITION for certiorari has been prepared with a studious effort to avoid such an elaborate statement of detail as to obscure the questions of law presented in this case. It is hoped, therefore, that any further statement of facts is unnecessary, except that possibly in the course of argument it may become expedient to add something on particular points to what has been already given in the petition. The questions will be discussed in the order in which they are presented in the petition.

First, the constitutional question as to the effect of what may be called the repeal of the statute prohibiting the defense of self-destruction sought to be secured to the company by the policy of insurance.

As it was claimed by the defendant in error that a statute subsequent to that which is designated as a repeal of this act expressly imposed this disability upon assessment companies like plaintiff in error, a few words will be said as to the constitutionality of the later act.

The next question is that upon which Judge Sanborn dissented from the judgment below; whether a statute prohibiting the defense of suicide can be held to apply to a defense not of suicide, either in its popular or technical legal significance, but to the defense of self-destruction by the insured while insane to such a degree that he was incapable of understanding the nature or consequences of his act.

The third and last question is, whether under the contract of insurance, by which the insured expressly agrees to abide by the constitution, rules and regulations of the company as they then were or might be constitutionally changed thereafter, his beneficiary is affected by a change legally made and sought to be applied to all policy holders in the lifetime of the insured, and of

which he had knowledge, by which the sum payable at his death was somewhat though not very considerably reduced from what it would have been under the plan in force when his policy was issued.

I.

Inasmuch as the Court of Appeals held in effect that the statute prohibiting the defense of suicide had been repealed as to companies like plaintiff in error by subsequent legislation, this argument may perhaps properly rest on that assumption. The statute prohibiting this defense was originally enacted in 1879, and was subsequently incorporated in the Revised Statutes of Missouri of 1889, as Section 5855. On this point the opinion of the court below proceeds as follows:

"On March 30, 1887, nearly two years after the policy in "suit was issued, the legislature of the State of Missouri enacted "a law with reference to insurance companies doing business on "the assessment plan, which now appears in the Revised Statutes of "that state for the year 1889, as article 3, c. 89 (being sections 5860 "to 5872 both inclusive). This act placed foreign insurance com- "panies doing business in the state on the assessment plan under "the supervision of the insurance department of the state, and one "section thereof (being section 5869) subjected such foreign assess- "ment companies to all the provisions of section 5912 of the Revised "Statutes of Missouri for 1889, which was then in force, but con- "cluded with the following proviso:

"'Provided, always, that nothing herein contained shall sub- "ject any corporation doing business under this article to any other "provisions or requirements of the general insurance laws of this "state, except as distinctly herein set forth.'

"Section 5912, to which reference was thus made, related "wholly to the mode of obtaining service on foreign insurance com-

"panies doing business within the State of Missouri; and it is "accordingly claimed that the operation of the proviso was to re- "lieve insurance companies doing business on the assessment plan, "as distinguished from companies doing business in other ways, "from the disability imposed by section 5855, to plead suicide as a "defense, inasmuch as section 5855 forms a part of the general "insurance laws of the state, and was not incorporated into the "act of March 30, 1887, relating to assessment companies. It is "by no means certain that the proviso in question was intended "by the lawmaker to except assessment companies from the opera- "tion of section 5855. The legislature did not see fit to repeal "that section, but left it standing and in full force as a part of the "statute law of the state—at least, in so far as it affected ordinary "life companies; and it is difficult to assign any reason for prohibit- "ing companies of the latter kind from pleading the defense of "suicide which does not apply with equal force to assessment com- "panies. It has been held, however, *Haynie* v. *Indemnity Co.*, "139 Mo., 416, 41 S. W., 461, that from the date of its adoption "the proviso did exempt assessment companies from the operation "of section 5855, and enable them to plead suicide as a defense "to policies thereafter issued which by their terms excluded the "risk of death by suicide. Accepting that as an interpretation of a "local law by the highest court of the state, which this court is "required to adopt, we pass to the inquiry whether it was com- "petent for the legislature, by the proviso in the act of March 30, "1887, to relieve the defendant company from the operation of sec- "tion 5855, as respects policies theretofore issued and then out- "standing, which were clearly subject to its provisions when they "were issued."

104 Federal Reporter, 640-641.

Now, as a question of first impression, it certainly seems to be novel doctrine that where parties enter into a contract which would be effectual, upon a contingency thereafter arising, to enable one of the parties sued upon such contract to assert a com-

plete defense, except for the provisions of a statute existing at the date of such contract and prohibiting such a defense, the repeal of that statute before the event on which the liability of the defendant is asserted has occurred can in any just sense be said to impair the contract of the parties. Whether it is so far applicable to their rights as to relieve the defendant from the disability imposed by the statute repealed is quite another question. That is a question of statutory construction; this is a question of constitutional power.

The former question in this case was apparently decided in favor of the plaintiff in error's contention: it is the question of power that was resolved against it.

The leading modern authority upon American constitutional law, in so far as a writer of text can be regarded as an authority, is Thomas M. Cooley. In his great work upon Constitutional Limitations, he states, with his usual accuracy and clearness, the limitation upon legislative power in respect of legislation intended to remove statutory obstacles to the enforcement of contracts otherwise valid. At page 374 he says: "When such acts go no further than to bind a party by a contract which he has attempted to enter into, but which was invalid by reason of some personal inability on his part to make it, or through neglect of some legal formality, or in consequence of some ingredient in the contract forbidden by law, the question they suggest is one of policy and not one of constitutional power." The learned court below observed after employing the language already quoted:

"In considering this question it must be borne in mind that "Section 5855 not only provides that in suits on life insurance "policies issued by companies doing business in the State of Mis-"souri, it shall be no defense that the insured committed suicide, but

"also declares that any stipulation in the policy to the contract shall be void."

It is thought the significance of this fact is possibly misapprehended by the learned court; but if it is precisely such as the court seems to suppose, what then appears except that there was a contract invalid in consequence of some ingredient forbidden by law? Such a case falls within one of the classifications of Judge Cooley; that of cases in which statutes seeking to relieve existing contracts of such provisions suggest no question of constitutional power.

Another still greater authority may be invoked. In his Commentaries upon the Constitution, Joseph Story says upon this point:

"If a state statute should, contrary to the general principles of "law, declare, that contracts founded upon an illegal or immoral "consideration, or otherwise void, should nevertheless be valid, "and binding between the parties, its retrospective character could "not be denied; for the effect would be to create a contract between "the parties, where none had previously existed. Yet it would not "be reached by the constitution of the United States; for to create "a contract, and to impair and destroy one, can never be construed "to mean the same thing. It may be within the same mischief, and "equally unjust, and ruinous; but it does not fall within the terms "of the prohibition."

Vol. 3, Section 1392.

But the learned court below proceeds upon the theory that the statute was worked into the contract and became a part of it. I must again quote Story upon this point:

Vol. 3, Section 1377.—"But much diversity of opinion has "been exhibited upon another point: how far the existing law enters "into, and forms part of, the contract. It has been contended by "some learned minds, that the municipal law of the place, where

"a contract is made, forms a part of it, and travels with it wherever "the parties to it may be found. If this were admitted to be true, "the consequence would be, that all the existing laws of a state, "being incorporated into the contract, would constitute a part of its "stipulations, so that a legislative repeal of such laws would not in "any manner affect it."

And again, Section 1378: "It has, therefore, been judicially "held by a majority of the Supreme Court, that such a doctrine is "untenable. Although the law of the place acts upon a contract, "and governs its construction, validity and obligation, it consti- "tutes no part of it. The effect of such a principle would be a "mischievous abridgment of legislative power over subjects within "the proper jurisdiction of states, by arresting their power to "repeal, or modify such laws with respect to existing contracts."

To this may be added the concluding language of the section last cited as follows:

"The parties know that they must obey the laws; and that "the laws act upon their contracts, whatever may be their inten- "tion."

Upon this question the learned author refers to the case of *Ogden* v. *Saunders*, 12 Wh., 213. Two brief quotations from the opinion of Chief Justice MARSHALL in that case are quite applicable. At page 338 he says:

"What, then, was the original legal obligation of the contract "now under the consideration of the court?

"The plaintiff insists that the law enters into the contract so "completely as to become a constituent part of it. That it is to be "construed as if it contained an express stipulation to be dis- "charged, should the debtor become insolvent, by the surrender of "all his property for the benefit of his creditors, in pursuance of the "act of the legislature.

"This is, unquestionably, pressing the argument very far; and "the establishment of the principle leads inevitably to consequen- "ces which would affect society deeply and seriously.

"Had an express condition been inserted in the contract, de-
"claring that the debtor might be discharged from it at any time
"by surrendering all his property to his creditors, this condition
"would have bound the creditor. It would have constituted the
"obligation of his contract; and a legislative act annulling the
condition would impair the contract."

Again, at page 343, he says:

"It is not, we think, true, that contracts are entered into in
"contemplation of the insolvency of the obligor. They are framed
"with the expectation that they will be literally performed. In-
"solvency is undoubted a casualty which is possible, but is never
"expected. In the ordinary course of human transactions, if even
"suspected, provision is made for it, by taking security against it.
"When it comes unlooked for, it would be entirely contrary to rea-
"son to consider it as a part of the contract.

"We have, then, no hesitation in saying that, however law may
"act upon contracts, it does not enter into them, and become a part
"of the agreement. The effect of such a principle would be a mis-
"chievous abridgement of legislative power over subjects within the
"proper jurisdiction of states, by arresting their power to repeal
"or modify such laws with respect to existing contracts."

Possibly a brief digression may be permitted to inquire whether in this case it is admissible to suppose that self-destruction of the insured can fairly be regarded as within the contemplation of the parties to the contract of insurance, and whether there is any just basis for holding that by this contract taken in connection with the Missouri statute, the insured acquired a vested right to kill himself?

It cannot be maintained that the statute in question was written into the contract.

Suppose a party taking a policy precisely like that in suit while this statute was in effect had further stipulated therein by writing and under his seal that the contract should be read, con-

strued and enforced as it was written in spite of the statute, and that the insured expressly waived all right for himself and for all claiming under the policy to seek or take any benefit or advantage of this statute. Such a covenant would be clearly bad upon the principle laid down by Story that the laws act upon the contracts of parties whatever may be their intention. This contract would be invalid simply because it would be contrary to the policy of the state. A contract precisely like that in suit with the statute in question written into it, if in fact there were no statute, would be an insensible contract, contradictory and conflicting in terms. It loses this character and becomes susceptible of ready interpretation because the statute operates externally upon the court and the parties. It prohibits a defense which, on the facts stipulated, the parties had sought to secure for the company by the terms of their contract. The statute is wholly extrinsic to the contract and independent of it; written into the contract and treated as pact and not as law, it might be modified by other provisions of the contract inconsistent with or expressly repugnant to it; operating as law, no matter what the terms of the contract, the statute is paramount and controlling because the sovereign so declares. This question is one of power; it pertains not strictly to the domain of contract law at all but to the power of police which the state possesses. It is as precisely and certainly a question pertaining to the public policy of the state as are questions arising under the laws against usury.

The opinion of the Court of Appeals proceeds upon the theory that the question presented stands precisely as it would had the policy contained a stipulation in the language of the statute. The fallacy of this view is clearly demonstrated by the language quoted from Marshall and Story. The theory adopted by the

court necessarily involves this as its basis; that if the legislature of Missouri after the policy in suit was issued, but long prior to the death of the insured, had passed a statute expressly repealing the act of 1879 referred to as Section 5855 of the Revised Statutes of Missouri for 1889, and explicitly declaring that all contracts of insurance stipulating that the insured and not the insurer should take the risk of his self-destruction, whether sane or insane, should be valid and effectual, and should be read precisely as written whether entered into before or after the adoption of such repealing statute, such act would be entirely unconstitutional as beyond legislative power.

On this point the position of the court is that the policy of insurance became effective when it was issued precisely as if it contained a stipulation directly contrary to the so-called suicide clause, which it actually contained, and that such a subsequent statute, as it would materially affect the rights of the parties to this contract, must be regarded as impairing its obligation within the meaning of the constitutional prohibition. This view fails to note the distinction repeatedly pointed out by this court between legislation which simply relieves a contract otherwise valid from some illegality fastened upon it by prior legislation, thus permitting the contract of the parties to be enforced as they have expressly agreed it should be; and legislation by which rights, secured by a contract entered into freely and voluntarily by the parties, are sought to be affected or impaired by the arbitrary exercise of legislative power.

Now, what was the precise language of the Statute of Missouri in question? It was this:

"In all suits upon policies of insurance on life hereafter issued "by any company doing business in this state it shall be no defense "that the insured committed suicide unless it shall be shown to the

"satisfaction of the court or jury trying the case that the insured "contemplated suicide at the time he made his application for the "policy and any stipulation in the policy to the contrary shall be "void."

The learned court below attaches much importance to the concluding words of this statute declaring any such stipulation void; but the court will notice that this was essentially a statute prohibiting a defense, and thus apparently not aimed primarily at the contract, but dealing rather with procedure when legal remedy upon it should be sought. The provision that any such stipulation should be void, taken in the connection in which it is used, amounts to nothing more than a legislative declaration, that so far as was necessary to secure the object of the statute, namely, the exclusion of a particular defense, a stipulation attempting to secure it should, for that purpose, be regarded as ineffective.

No time will be spent upon that vexed question, as to which the reports abound in profitless discussion; as to when "void" means "voidable."

The decisions of this court upon questions closely related to that here involved are so instructive that they may be safely relied upon for the determination of this case, and unless they have been most seriously misapprehended they are sufficient to demonstrate that upon an important question of constitutional law the learned court below fell into grave error.

A similar question arose in the case of *Whitewater Valley Canal Co.* v. *Vallette*, 21 Howard, 414. It was contended in that case that a certain agreement and bonds executed by the plaintiff in error were invalid under the laws of the State of Indiana, where the transactions arose. After they were entered into, the legislature of that state passed a special act validating these bonds. This court sustained that act. Mr. Justice CAMPBELL observed:

"The objection that the contract was illegal and that no judg-"ment can, therefore, be rendered upon it is not allowed from "any consideration of favor to those who allege it. The courts "from public considerations refuse their aid to enforce obligations "which contravene the laws or policy of the state. When the leg-"islature relieves a contract from the imputation of illegality "neither of the parties to the contract are in a condition to insist "on this objection."

The same ruling was made in another case, *City of Little Rock* v. *The Merchants Bank*, 8 Otto, 308. It was there contended that certain obligations of the City of Little Rock were illegal and hence invalid on the ground that they had been given to take up obligations for the debts of the city issued in illegal form as bank notes. It would appear from the statement of facts that after the illegal notes had been issued by the city and after the bonds to take them up were issued, the statutes of the state rendering such notes illegal had been repealed, and upon this point the Court remarked:

"So where the consideration of a contract declared void by "statute is morally good a repeal of the statute will validate the con-"tract.

Washburne v. *Franklin*, 35 Barb., 599.

"If the act of Dec. 14th, 1875, repealed the restraining laws ab-"solutely as to cities, which we do not decide, the notes first issued "by the city were valid from that time."

In *Ewell* v. *Daggs*, 108 U. S., 142, a statute of Texas provided:

"That all contracts or instruments of writing whatsoever, "which may in any way, directly or indirectly, violate the fore-"going provisions of this act by stipulating for, allowing, or re-"ceiving a greater premium or rate of interest than 12 per cent. "per annum for the loan, payment, or delivery of any money, goods, "wares, or merchandise, bonds, notes of hand, or any commodity, "*shall be void and of no effect* for the whole premium or rate of

"interest only; but the principal sum of money or the value of the "goods, wares, merchandise, bonds, notes of hand, or commodity "may be received and recovered."

Usury statutes were abolished by a subsequent constitutional amendment. It was claimed by the appellant that, notwithstanding this repeal of the usury laws, the rights of the parties were to be determined according to the law in force at the time the transaction took place; that by the terms of that law the contract between Daggs and Ewell was void as to the entire interest reserved and paid; that no subsequent law could make valid a contract originally void.

After discussing the use of the word "void" and its effect in various instruments, the court said:

"All that can be meant by the term, according to any legal "usage, is that a court of law will not lend its aid to enforce the "performance of a contract which appears to have been entered "into by both the contracting parties for the express purpose of carrying into effect that which is prohibited by the law of the land. "(Broom, Leg. Max., 732.)

"And Lord Mansfield, in *Holman* v. *Johnson*, Cowp., 343, "stated the ground on which, in such cases, courts proceed. He "said: 'The principle of public policy is this, *ex dolo mala* (*sic*) "*non oritur actio*. No court will lend its aid to a man who founds "his cause of action upon an immoral or an illegal act. If from "the plaintiff's own stating, or otherwise, the cause of action appear to arise *ex turpi causa*, or the transgression of a positive law "of this country, then the court says he has no right to be assisted. "It is upon that ground the court goes, not for the sake of the defendant, but because they will not lend their aid to such a "plaintiff.'"

The court proceeds to make a distinction between acts which are *mala in se* and those which are *mala prohibita*. The making

of the contract here in question in so far as it relates to self-destruction is at most only prohibited by statute.

In the cases cited below in which it was held that the statute became a part of the contract, not one was cited in which the statute was repealed before the case arose in which the statute was invoked. The question was whether provisions of statutes presumed to be enacted in the public interest could be waived by the parties to the contract. There is no authority for the position that such a statute prohibiting certain defenses becomes a part of the contract which may not be disturbed by a subsequent law.

As for the usury statute of Texas being a penal statute, it was so held, incidentally; but the court, after discussing this feature, said:

"Independent of the nature of the forfeiture as a penalty, "which is taken away by a repeal of the act, the more general and "deeper principle on which they (the decisions on penalties) are "to be supported is, that the right of a defendant to avoid his con-"tract is given to him by statute, for purposes of its own, and not "because it affects the merits of his obligation; and that whatever "the statute gives, under such circumstances, as long as it remains "*in fieri*, and not realized by having passed into a completed trans-"action, may, by a subsequent statute, be taken away. It is a priv-"ilege that belongs to the remedy, and forms no element in the rights "that inhere in the contract. The benefit which he has received "as the consideration of the contract, which, contrary to law, he "actually made, is just ground for imposing upon him, by subse-"quent legislation, the liability which he intended to incur. That "principle has been repeatedly announced and acted upon by this "court. *Read* v. *Plattsmouth*, decided at the present term (*ante*, "208.) And see *Lewis* v. *McElrain*, 16 Ohio, 347; *Johnson* v. "*Bentley*, *id.*, 97; *Trustees* v. *McCaughey*, 2 Ohio St., 155; *Sal-*

"*terlee* v. *Mathewson*, 16 Serg. & R., 169; 2 Pet., 380; *Watson* "v. *Mercer*, 8 Pet., 88.

"The right which the curative or repealing act takes away in "such a case is the right in the party to avoid his contract, a naked "legal right which it is usually unjust to insist upon, and which no "constitutional provision was ever designed to protect. Cooley, "Const. Lim., 378, and cases cited."

In what, then, does this case differ from that case? The statute (Sec. 5855) operated, if at all, in suits upon certain classes of private contracts not immoral in themselves considered, and prohibited one party from making a certain defense, declaring the illegality of any stipulation therefor; the usury statute operated upon private contracts and "enabled the parties to resist a recovery." The respective statutes provided that the parts of such contracts which were in violation of the statute should be "*void and of no effect*," or "*void*."

In the case of *Satterlee* v. *Mathewson*, 2 Pet., 380, a Pennsylvania statute, passed in 1826, provided that deeds of *femes covert* which had been held to be invalid because of the lack of conformity to the statute under which they purported to be made, should no longer be invalid, and in discussing whether this statute impaired the obligation of the contract the court said:

"It is not easy to see how a law which gives validity to a void "contract can be said to impair the obligation of that contract. "Should a statute declare, contrary to general principles of law, "that contracts founded upon an illegal or immoral consideration, "whether in existence at the time of passing the statute, or which "might hereafter be entered into, should nevertheless be valid and "binding upon the parties, all would admit the retrospective char- "acter of such a statute, and that the effect of it was to create "a contract between parties where none had previously existed. "But it surely cannot be contended that to create a contract or to "destroy or impair one mean the same thing."

In *Watson* v. *Mercer*, 8 Peters, 88, in discussing the same statute of 1826, Mr. Justice STORY said:

"So far, then, as it has any legal operation it goes to confirm "and not to impair the contract of the *femes covert*. It gives the "very effect to their acts and contracts which they intended to give, "and which from mistake or accident has not been effected."

Satterlee v. *Mathewson* is then cited as settling the question.

In the case of *Austin* v. *Burgess*, 34 Wis., 156, decided before *Ewell* v. *Daggs*, *supra*, the Supreme Court of Wisconsin, in discussing a statute repealing a usury law, criticised the language of this court in *Satterlee* v. *Mathewson*, and adopted an adverse view; and there are other cases of like import; but the law of this jurisdiction is settled by the decisions of this court in the cases cited herein.

In *Gross* v. *Mortgage Co.*, 108 U. S., 497, it appeared that the act of April 9, 1875, of Illinois, permitted foreign corporations to loan money in Illinois and take mortgages as security, which was prohibited by the general incorporation act of 1872, the language of which is as follows:

"Foreign corporations, and the officers and agents thereof, doing "business in his state, shall be subjected to all the liabilities, re- "strictions and duties that are or may be imposed upon corporations "of like character organized under the general laws of this state, and "shall have no other or greater powers. And no foreign or domestic "corporation, established or maintained in any way for the pe- "cuniary profits of its stockholders or members, shall purchase or "hold real estate in this state, except as provided for in this act."

In passing upon the contention of the plaintiff in error that the mortgage was invalid under the law in force at the time of its execution this court said:

"That the act in question is not repugnant to the constitution, "as impairing the obligation of a contract, is, in view of the settled

"doctrines of this court, entirely clear. Its original invalidity "was placed by the court below upon the ground that the statutes "and public policy of Illinois forbade a foreign corporation from "taking a mortgage upon real property in that state to secure a loan "of money. Whether that inhibition should be withdrawn was, so "far, at least, as the immediate parties to the contract were con- "cerned, a question of policy rather than of constitutional power. "When the legislative department removed the inhibition imposed, "as well by statute as by the public policy of the state, upon the "execution of a contract like this, it cannot be said that such legis- "lation, although retrospective in its operation, impaired the obli- "gation of the contract. It rather enables the parties to enforce the "contract which they intended to make. It is, in effect, a legislat- "ive declaration that the mortgagor shall not, in a suit to enforce the "lien given by the mortgage, shield himself behind any statutory "prohibition or public policy which prevented the mortgagee, at the "date of the mortgage, from taking the title which was intended "to be passed as security for the mortgage debt. We repeat here "what was said in *Satterlee* v. *Mathewson*, 2 Pet., 412, and, in sub- "stance, in *Watson* v. *Mercer*, 8 Pet., 110, that 'it is not easy to "perceive how a law, which gives validity to a void contract, can "be said to impair the obligation of that contract.'"

When the same case was once before the Supreme Court of Illinois, before it came to this court, that court said:

"Unless there be a constitutional inhibition, a legislature has "power, when it interferes with no vested right, to enact retro- "spective statutes to validate invalid contracts or to ratify and "confirm any act it might lawfully have authorized in the first in- "stance. We do not deem it necessary to cite any of the many "cases where this doctrine has been announced or followed.

"In Cooley's Constitutional Limitations, p. 374, it is said: "'When such acts go no further than to bind a party by a contract "which he has attempted to enter into, but which was invalid by "reason of some personal inability on his part to make it, or "through neglect of some legal formality, or in consequence of

some ingredient in the contract forbidden by law, the question they suggest is one of policy and not one of constitutional power.' "

U. S. Mortgage Co. v. *Gross et al.*, 93 Ill., 483, 494.

There are other cases to the same effect.

In *Rosenplanter* v. *Prov. Sav. Life Soc.*, 96 Fed., 721, decided by the Circuit Court of Appeals for the Sixth Circuit, a term policy was issued in 1889 for the term of one year, renewable during life upon certain conditions. The contract was a New York contract, and at the time of its execution, the following statute, passed in 1877, was in force:

" No life insurance company doing business in this state shall "have power to declare forfeited or lapsed any policy hereafter is- "sued or renewed by reason of non-payment of any annual premium "or interest, or any portion thereof, except as hereinafter provided. "Whenever any premium or interest due upon any policy shall "remain unpaid when due, a written or printed notice stating the "amount of such premium or interest due on said policy, the place "where said premium or interest should be paid, and the person "to whom the same is payable, shall be duly addressed and mailed "to the person whose life is assured."

Before his death the insured was in default for several payments which, according to its terms, terminated the policy. It was decided that the notices required by the statute had not been sent, and that " the effect of the prohibition against declaring a " forfeiture of the insurance under the terms of the contract was " to keep the policy alive, notwithstanding the stipulation of the " parties to the contrary."

But by a subsequent act passed and in force before the death of the insured, and before default on the last premium due, the above non-forfeiture law was repealed and a similar statute was passed, providing for notice before a forfeiture could exist, but excepting from its provisions term policies such as the one in suit.

The contention was made that the prior statute had "become so incorporated into the contract as to become a part of the contract itself, and that the provisions of the act of 1877 prohibiting a forfeiture of the interest of the insured in the policy without a notice, according to the terms and conditions of the statute became as much a term and stipulation of the policy as if inserted therein by the parties themselves," and that any repeal or alteration of the act of 1877 "so as to subject the contract to forfeiture without the statutory notice would impair the obligation of the contract." But the learned court, speaking by Judge LURTON, said:

"To this we cannot agree. The contract which the parties "themselves made was one for an insurance for a single year, with "the privilege of renewal for succeeding years upon condition of "the payment of an additional premium upon the day named in "the policy. Failure to renew it according to the condition of the "contract put an end to the policy without more ado. So with re"spect to the payment of the second half of the yearly premium. If "not paid when due, the contract was thereby terminated. The "act of 1877 interposed, and for the benefit of the insured provided "that the stipulation of the contract in respect to the termination of "the policy should not be enforced unless notice of a certain char"acter had previously been given by the insurer. The statute did "not provide that the interest of the insured shall not be forfeited "upon failure to renew the policy by the payment of the stipulated "premium, but that the forfeiture should not be declared or be "effective unless the default in the payment of the stipulated pre"mium should occur after a particular notice had been given prior "to the stipulated day of payment, or a default should continue "after a particular notice and demand for payment had been given. "Thus the law stepped in, and in effect said: 'You shall not en"force the stipulations into which you have entered in respect to "the effect of a default in payment of premiums, unless you first "comply with this statute by giving the notice herein required.'

"The subsequent repeal of this statute does not impair the obliga-"tion of the contract in respect to premiums which should mature "thereafter. The laws with reference to which the parties must "be assumed to have contracted, * * * were those which, in their "direct or necessary legal operation, controlled or affected the "obligations of such contract.' *Insurance Co.* v. *Cushman*, 108 "U. S., 51-65, 2 Sup. Ct., 236; *Ewell* v. *Daggs*, 108 U. S., 143, 2 "Sup. Ct., 408; *Gross* v. *Mortgage Co.*, 108 U. S., 477, 2 Sup. Ct., "940; *Butler* v. *Association*, 97 Tenn., 679, 37 S. W., 385; *Cur-"tis* v. *Leavitt*, 15 N. Y., 15, 85; *Lewis* v. *McElvain*, 16 Ohio, "347; *Trustees* v. *McCaughy*, 2 Ohio St., 152; Cooley, Const. "Lim., side pages 293-378."

Judge Hammond, who heard that case below, very admirably answered the argument that the act of 1877 so entered into the contract as to make its repeal an impairment of its obligation, by saying:

"'If the provisions of the statutes as to notice had been written "in the policy as agreements of the parties, that would have been "their contract, and, of course, the law could not make another "contract for them. Wherefore, it would be enforced by the courts "as the agreement of the parties; but the statute did not under-"take to make a contract of insurance for the parties. It was only "a statutory regulation for the government of insurance com-"panies, compelling them to give notice as required by the act, "of the non-payment of premiums before they would be allowed to "declare a policy forfeited according to its stipulations. It was a "regulation that the legislature had a right to make. It was a "beneficent regulation for relief against a forfeiture created "under the contract, which it was entirely competent for the legis-"lature to withdraw, alter or amend, as to it might seem best.'"

So, in this case, the suicide statute was a statutory regulation for the government of insurance companies, controlling the procedure in suits upon contracts within the competency of the parties, and prohibiting a certain defense, in such suits, when they

were brought. The subsequent repeal of this statute as to assessment companies did not impair the obligation of the contract, but on the contrary, the act of 1887 permitted the contract to take effect as it was originally made, without reference to the suicide statute.

The case of *Phenix Insurance Co.* v. *Pollard*, 63 Miss., 641, presents a similar question. Section 589 of the Mississippi Code of 1880 provided for certain license taxes on various kinds of business and further provided that "all contracts made with any "person who shall violate this act, in reference to the business car- "ried on in disregard of this law, shall be null and void so far only "as such person shall base any claim upon them, and no suit shall "be maintainable in favor of such person on any such contract." The plaintiff had a contract of insurance on her property against fire. She had not paid the tax required by the statute. The property had burned and she sued to recover. The defendant set up the statute, to which defense the plaintiff demurred on the ground that the contract did not come within the terms of the statute, but the Supreme Court held that it did. Shortly thereafter, the legislature passed an act providing that if any person had failed to pay the privilege tax and that if such person would pay to the proper official the tax for the preceding three years he would thereby be relieved of all the pains and penalties imposed by Section 589, *supra*, and providing also that all contracts made by such persons at any time prior to the passage of the act "shall become enforceable as other contracts in the proper courts, whether suit be now pending or not." The defendant in the case attacked the statute and very exhaustive briefs were filed on both sides.

In discussing the question the court said:

"It is retroactive, but it is not on that account unconstitutional,

"since such legislation is not prohibited by the constitution of the "United States or of this state. It cannot be condemned as an in- "vasion by the legislature of the domain of executive or judicial "power, for it is legislative in its character, although it is for the "relief of a class. It is settled by decisions of the Supreme Court "of the United States that such an act is not violative of the consti- "tution of the United States. *Satterlee* v. *Matthewson*, 2 Peters, "380; *Watson* v. *Mercer*, 8 Peters, 88; *Ewell* v. *Daggs*, 108 U. S., "143; *Gross* v. *Mortgage Co.*, *Ib.*, 477; *Campbell* v. *Holt*, 115 "U. S.

"The overwhelming weight of authority in the courts of the "states, whether considered with reference to the number or value "of the decisions, is in favor of the proposition that this act is "not violative of the constitution of the state, and is a valid exercise "of the undoubted power of the legislature.

"We might cite a long list of cases in support of this conclu- "sion and quote largely from them, but it is unnecessray. The "subject is discussed and most of the cases bearing upon it are re- "ferred to in the last edition of Cooley's Constitutional Limitations "under the head of 'Retrospective Laws.' Speaking of the legis- "lative acts validating invalid contracts, this learned author says: "'When these acts go no farther than to bind a party by a contract "which he has attempted to enter into but which was invalid by "reason of some personal inability on his part to make it, or through "neglect of some legal formality, or in consequence of some ingre- "dient in the contract forbidden by law, the question which they "suggest is one of policy and not of constitutional power,' and in "this we concur. The few cases denying this are unsatisfactory, "and proceed, as we think, upon an erroneous view of legislative "authority.

"The state, for purposes of its own, denied to him who vio- "lated its revenue law the right to enforce any contract he made in "reference to the business unlawfully carried on. It was com- "petent for the state to remove the disability it had imposed and "to permit contracts not before enforceable because of this disabil-

"ity to be enforced. The state may not make contracts between in-"dividuals, it is true, but when individuals have themselves made "contracts not enforceable only because of some obstacle the state "has interposed, the power which created the barrier may remove "it at any time before it has become *res judicata* between the par-"ties. Until then there cannot be said to be a vested right beyond "the reach of legislative interference."

It is true that in some of the cases cited the entire contract in question was ineffective by reason of statutory prohibition; while in this case the statute only reached one clause in the contract. Therefore, the court below doubtless regarded this as a case where there was a valid contract to which was attached an invalid proviso; and considered, that to give effect to the latter must necessarily impair the obligation of the contract as it would have read without the proviso.

But in this the learned court fell into radical error. A careful study of *Ogden* v. *Saunders*, in connection with the powerful and luminous argument submitted by Webster in that case, will establish that the obligation of contracts protected by the constitutional provision is the obligation arising from the voluntary engagement of the parties; and that this protection does not embrace the external incidents added to such compacts by municipal law. It may be conceded that had the parties distinctly stipulated that self-destruction should be no defense, a subsequent statute declaring that it should be, would be beyond legislative power. But their stipulation is to the contrary. That it fails of effect is due solely to the compulsion of the statute. When that is withdrawn the obligation of the contract into which the parties entered is in nowise impaired; on the contrary, it is then fully recognized exactly as the language employed imports. The repealing act only alters the contract as it relieves it from the effect of the earlier

statute. This is not at all to impair its obligation within the meaning of the constitutional prohibition.

That this view is the true one seems to follow from the decision of this court in *Ewell* v. *Daggs*, and the decision of the Circuit Court of Appeals of the Sixth Circuit in *Rosenplanter* v. *Provident Savings Life Soc.* In each of these cases the repealing statute was sustained, although the result was thus to alter the contract in question by relieving one of its provisions from the effect of a prior prohibitive statute.

It is true the constitution of Missouri prohibits retrospective legislation. But this statute is not, in that sense, retrospective.

In *Shields* v. *Clifton Hill Land Co.*, 94 Tenn., 123, it appeared that Chapter 142 of the Act of 1875 (Tenn.) requires the acknowledgment of a corporate charter to be taken before a clerk of the county court and forbids it to be taken before any other official. The Act of March 10, 1890, validates all charters previously acknowledged before a Notary Public and gives them force as if acknowledged by a clerk of the county court. Certain parties had prosecuted to final judgment an action to enforce their lien against a corporation whose charter was acknowledged before a Notary Public and desired to assert the personal liability of the incorporators on the ground that their charter was originally invalid. The constitutional provision in Tennessee is "that no "retrospective law, or law impairing the obligation of contracts, "shall be made." (Const. Tenn., Art. 1, Sec. 20). The court says:

"This does not mean that absolutely no retrospective law shall "be made, but only that no retrospective law which impairs the "obligation of contracts, or divests or impairs vested rights, shall be "made. *Townsend* v. *Townsend*, Peck, 15, 17; *Wynne* v. *Wynne*,

"2 Swan., 405; *Collins* v. *Railroad Co.*, 9 Heisk., 847. It does "not inhibit retrospective laws made in furtherance of the police "power of the state; and, generally, it does not prohibit remedial "legislation, nor stand in the way of statutes passed to cure some "defect or omission in former proceedings or enactments, or in the "case of parties attempting to comply therewith. *Marr* v. *Bank*, "4 Lea, 585; *Corporation of Knoxville* v. *Bird*, 12 Lea, 121; "*Demoville* v. *Davidson Co.*, 87 Tenn., 223; *Munn* v. *Illinois*, "94 U. S., 113; *Beer Co.* v. *Massachusetts*, 97 U. S., 25; *Stone* "v. *Mississippi*, 101 U. S., 814; Wade, Retro. Law., Sec. 23, 257; "1 Kent, Comm., p. 456; 2 Story, Const., 674; Cooley, Const. Lim. "(5th ed.), 443, 448, 455, 458; *Ewell* v. *Daggs*, 108 U. S., 150, "151, 2 Sup. Ct., 408; *Gross* v. *Mortgage Co.*, 108 U. S., 488, 2 "Sup. Ct., 940; *Satterlee* v. *Matthewson*, 2 Pet., 412; Suth. St. "Const., Sec. 206, 207."

It remains only to add a few words as to the Act of 1897, by which it was attempted to impose upon assessment companies the provisions of Section 5855, which is the so-called suicide statute.

This act is unconstitutional in this regard, on account of its title; and so doubtless the Court of Appeals regarded it.

Section 28, Article IV, Constitution of Missouri, referring to this matter, is as follows:

"No bill (except appropriation bills * * * etc.) shall "contain more than one subject, which shall be clearly expressed "in its title."

The history of this Act of 1897 in its relation to Section 5855 is instructive. It was entitled: "**An Act to repeal Section 5869** of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, entitled 'Insurance Companies on the Assessment Plan' and to enact a new section in lieu thereof and designated as Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, *relating to*

statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defence thereon, for such misrepresentations;" and was first introduced in the Senate January 18, 1897, by Senator Major, providing for a section as follows:

"Section 5869. Every corporation doing business under this article shall annually, on or before the 1st day of February, return to the superintendent of the insurance department, in such manner and form as he shall prescribe, a statement of its affairs, for the year ending on the preceding 31st day of December, and the said superintendent in person or by deputy shall have the power of visitation of and examination into the affairs of such corporation, which are conferred upon him in the case of life insurance companies by the laws of this state; and all such foreign companies are hereby declared to be subject to and required to conform to the provisions of Sections 5912, 5849 and 5850 of the Revised Statutes of Missouri of 1889, and governed and controlled by all the provisions in said section contained; provided always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this state, except as distinctly herein set forth and provided."

This is identical with the law as it now stands, with the important exception that the figures "5855" between the word "sections" and the figures "5912" were not then a part of it. The bill was read and ordered printed. On Monday, January 25, 1897, the bill was referred to the committee on insurance. On Friday, January 29, 1897,

"Senator Childers, from the committee on insurance and insurance companies, submitted the following report, which was read:

"Mr. President: Your committee on insurance and insurance companies, to which was referred Senate Bill No. 105, entitled: 'An Act to repeal Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, entitled 'Insurance Companies on the Assessment Plan' and to enact a new section in lieu thereof and designated as Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentation,' begs leave to report that it has examined the same and recommends that it do pass with the accompanying amendment:

"Amend Senate Bill No. 105 by inserting between the word 'section' and the figures '5912' in the 28th line of said original Senate bill, the figures '5855.' Which was read first and second times and adopted."

The bill, as amended, after going through the necessary course, was passed by the Senate on February 4, 1897, by a vote of 18 in the affirmative and 11 in the negative, and thence it went through the regular and customary channels until it was approved March 15, 1897, by Governor Stephens.

A careful examination of the journals of the Senate and House of Missouri in 1897 does not reveal the use of the word suicide in connection with this bill, and the title of the act does not mention it. The figures relating to suicide were inserted by amendment merely as "figures," and there was no attempt to enlarge the title of the act to cover the important addition referred to by these "figures." In view of this method of procedure the act, in so far as "5855" is concerned, is not only subject to the objection that it violates Sec. 28 of Art. IV, set forth above, but it also violates Sec. 25 of Article IV of the Constitution of Missouri, as follows:

"Art. 4, Sec. 25. No law shall be passed except by bill and no "bill shall be so amended in its passage through either house as to "change its original purpose."

in that the amendment adding the figures "5855" enlarged and so changed the purpose of the original act, which was limited to the purpose set forth in the title.

It is not enough that the act embrace but a single subject or object, and that all its parts are germane; the title must express that subject, and comprehensively enough to include all the provisions in the body of the act.

Sutherland Stat. Const., 887.
City of Kansas v. *Payne*, 71 Mo., 495.
Mewherter v. *Price*, 11 Ind., 201.
Ryerson v. *Utley*, 16 Mich., 269.
Dorsey's Appeal, 72 Pa. St., 192.
Knoxville v. *Lewis*, 12 Lea, 180.
Stiefel v. *Md. Inst.*, 61 Md., 144.
Town v. *Fishkill*, 22 Barb., 634.
Graves v. *Trustees*, 45 N. J. L., 399.
Shivers v. *Newton*, 45 N. J. L., 469.
Cooley's Const. L., 6 ed., 179.
Greaton v. *Griffin*, 4 Abb. Pr. (No.), 310.

The whole act can be valid only when the subject stated includes all the provisions in the body of the act.

Mete v. *Robinson*, 69 Ala., 413.
Ex Parte Pollard, 40 Ala., 99.
Graves v. *Trustees*, 45 N. J. L., 399.
Shivers v. *Newton*, 45 N. J. L., 469.
Ryerson v. *Utley*, 16 Mich., 269.

When the title of the act is specific, the act must not include

matters not specified, though they be of the same general character.

Taylor v. *Kirby*, 31 Ill. App., 657, 659.
W. C. St. Ry. v. *Lake View*, 105 Ill., 207, 213.
People v. *Mellen*, 32 Ill., 181, 182.

This question passed *sub silentio* in the Court of Appeals. Apparently that court regarded this contention for the insurance company as sound. For the case was there disposed of upon other questions which would not have been presented had the Act of 1897 been efficient to impose the provisions of Section 5855 upon assessment companies.

II.

The so-called suicide statute applies only where the insured commits suicide; it is inapplicable where, as in this case, he takes his own life while insane and incapable of comprehending the nature of his act.

The petitioner upon this point might perhaps be justified in relying upon the dissenting opinion of Judge Sanborn, where the matter is very clearly put. But possibly a brief statement with some reference to cases may be admissible.

Section 6570, Revised Statutes of Missouri, 1889, referring to the construction of statutes, provides that "words and phrases "shall be taken in their plain, ordinary and usual sense, but tech- "nical words and phrases, having a peculiar and appropriate "meaning in law, shall be understood according to their tech- "nical import." How shall we determine the "*plain, ordinary "and usual sense*" of words and phrases within the meaning of this statute? The meaning placed upon this part of Section

6570 by the Supreme Court of Missouri will be binding upon this court.

In *State* v. *Pagels*, 92 Mo., 309, where the question was the qualifications of a juror, the word "*citizen*" was construed in its "plain, ordinary and usual sense" as "one entitled to vote," the definition being derived from Section 2, Article VIII., Missouri Constitution of 1875.

In *State* v. *Jones*, 102 Mo., 307, the word "by-stander" as used in a statute requiring a bill of exceptions in a certain contingency to be signed by "three by-standers," is held to mean "one who stands near; one who has no concern with the business "transacting," citing Webster's Dictionary. It is also here said that words and phrases shall be taken in their "plain, ordinary "and usual sense," as provided by the statute.

In *State ex rel. Withers* v. *Stonestreet*, 99 Mo., 371, the word "term" as used in the phrase "term of office" is defined in its "plain, ordinary and usual sense" as meaning "the time for "which anything lasts"; "any limited time"; citing Webster's Dictionary.

In *Christian* v. *Insurance Company*, 143 Mo., 460, 466, it is held that the word "contemplated" in Section 5855, now under consideration, means "intended." The authority cited for this interpretation is *Insurance Company* v. *Florida*, 32 U. S. App., 753; 69 Fed., 932, 936, where the court below held by THAYER, Judge, that the word "intended" is a synonym of the word "contemplated," and cited several cases. This interpretation is followed in the *Christian* case.

In *State ex rel., etc.*, v. *Perkins*, 139 Mo., 115, the court in determining the "ordinary and usual meaning" of the word "until," refers to "the ordinary meaning of the term as it has

"been expressly adjudicated," and proceeds to cite judicial authorities.

In *State* v. *Gibson*, 11 Mo., 92, 96, in determining the meaning of the word "concubinage" as used in a criminal statute, the court says:

"If, as we take it, the word employed is to be taken in its "'ordinary sense' in the popular acceptation of the term, we must "turn to the standards of our language in order to ascertain the ac-"cepted meaning of the term."

The court proceeds to cite the meanings given by Webster's Dictionary.

In each of the foregoing cases the court, in determining the "plain, ordinary and usual meaning" of words as used in various statutes, has referred either to Webster's Dictionary or to judicial authorities to determine such meaning. The "plain, "ordinary and usual sense" of a word as used in the statute must then be gathered, according to the rule of the Supreme Court of Missouri, from such standard authorities as Webster and from judicial decisions, if the word or phrase has been defined by the latter authorities. What, then, is the meaning of the phrase, "commit suicide," in its "plain, ordinary and usual sense," as it may be gathered from these authorities?

The definitions of the dictionaries are as follows:

"Suicide"—"The act of taking one's life, voluntarily and in-"tentionally; self-murder; specifically (law) the felonious killing "of one's self; the deliberate and intentional destruction of one's "own life by a person of years of discretion and of sound mind; "one guilty of self-murder; a *felo-de-se*." Webster's Dictionary, "1895.

"Suicide—the act of designedly destroying one's life; to com-"mit suicide at common law, the person must be of years of dis-"cretion and of sound mind." Century Dictionary.

"Suicide—the act of one who designedly kills himself; the "voluntary taking away of one's own life; self-slaughter; self-"murder; self-homicide; one who deliberately and intentionally "kills himself; one who commits self-slaughter. In law, suicide "is the deliberate and intentional destruction of one's self by a "person of years of discretion, and in his senses. Self-slaughter "by an insane man or a lunatic is not an act of suicide within the "meaning of the law. (Burrill.) Up to the middle of the seven-"teenth century our good writers used self-homicide, never suicide." "Worcester's Dictionary.

Adopting the method of the Supreme Court of Missouri for determining the "plain, ordinary and usual sense" of words and phrases, we find no standard authority for a meaning of the phrase "commit suicide" which includes the act of one "insane "to such an extent as to be incapable of understanding the nature "or consequences of his act." If the words are to be taken in their "plain, ordinary and usual sense," they must be limited to acts which are voluntarily and intentionally committed by one "who understands the moral character, general nature, conse-"quences and effect of his act." In this case, however, it should be remembered that the words "commit suicide" in section 5855 were used in relation to the subject of insurance, in which connection they had acquired a well-understood and accepted meaning. In applying them to insurance companies, the legislature will be presumed to have used them in just the sense that they would be used by such a company in its policies. "We must "understand and interpret the words used by the legislature in "reference to the context and subject-matter."

Ruggles v. *Washington County*, 3 Mo., 496.

III.

The learned court below, conceding that the amendments to the company's constitution and by-laws were regularly made and that, if applicable to the policy in question, their effect would be to limit the recovery thereon as contended for the company, held them to be inapplicable because there was nothing to indicate that they were intended to have a retrospective operation.

The language on which the petitioner relies is as follows:

"I further agree, if accepted, to abide by the constitution, rules and regulations of the company as they now are, or may be constitutionally changed hereafter."

104 Fed. Rep., 643.

But no one has suggested that they should operate retrospectively. If by this observation the learned court intends that changes in the constitution of the company shall have no effect as to persons holding policies when such changes are made, it is only necessary to read the language just quoted to see that this view is inadmissible—for the insured agrees to abide by the constitution, rules, etc., as they now are, or may be constitutionally changed hereafter. When changed these provisions will operate prospectively. Those in question in this case, by which finally it was provided that on death of a member his beneficiary should take only the face of the policy, could not operate at all until death of the member. Upon a member's death doubtless the right of his beneficiary becomes vested. But what can be plainer than that the clause in question binds the member to any changes made prior to such time as by his death a right in the beneficiary accrues?

Before reviewing the cases which have been decided on this question, it will be well to state that they may be divided into two

classes. In one class there may be placed all those cases in which it appears that the power to amend the contract was reserved in some language such as that which is used above. There is another class of cases in which the question of amendment of by-laws subsequent to issuance of a policy comes up for consideration, and in which it is held that the power as exercised did not affect contracts issued prior thereto; but a careful examination of these cases discloses the assertion therein without exception of the rule, that such an amendment can not be made "without the "express consent of the member," or "unless the power to amend "is reserved." There is a third class of cases in which the principle is asserted that amendments may be made pursuant to a power reserved, but that such amendments shall be reasonable. In the second class of cases it is apparent that if the consent of the member had been given, or the power to amend had been reserved, the changes would have been held valid. In this case the power to amend is reserved, and the agreement or consent of the member to abide by the amendments which are made pursuant to this power is given in advance when he signs his application.

It will be noticed that the validity of the amendment is made to depend upon the terms of the contract itself, and that when there is a provision for amendment, and the change is not unreasonable, it is held to be in harmony with the contract and not in violation of it. *Hobbs* v. *Assn.*, 82 Ia., 107.

An early case is that of *Korn* v. *Mutual Assurance Society*, 6 Cranch., 192, decided in this court in 1810, the opinion being written by Mr. Justice Johnson. This was the case of a mutual fire assurance society in which each of the insured agreed to "pay the losses and expenses, each his share according to the sum "insured."

The court say:

"The liability of the members of this institution is of a two-
"fold nature; it results both from an obligation to conform to
"the laws of their own making as members of the body politic,
"and from a particular assumption or declaration which every
"individual signs on becoming a member; the latter is remarkably
"comprehensive—'and we will abide by, observe and adhere to
"'the constitution, rules and regulations that are already estab-
"'lished or may hereafter be established by a majority of the in-
"'sured, present in person or by representatives, or by the ma-
"'jority of property insured represented either by the persons
"'themselves or their proxy duly authorized,' etc. It would be
"difficult to find words of more extensive signification than these,
"or better calculated to aid, explain and enforce the general prin-
"ciple that the majority of a corporate body must have power
"to bind its individuals. It is true that the words of this declara-
"tion, as well as the general power of a corporate body, must be
"restricted by the nature and object of the institution. But apply
"this rule to the case before us and it can not avail the plaintiffs,
"for both the rule which suspends the security and the alteration
"made in its constitution under a vote of the majority are strictly
"conformable to the general objects for which the company was
"constituted."

The court further say:

"As to what is contended to be a material alteration of their
"charter, we consider it merely as a new arrangement and dis-
"tribution of their funds, and whether just or unjust, reasonable
"or unreasonable, beneficial or otherwise, to all concerned, is a
"matter of speculation proper for the consideration of the society,
"of which no individual is at liberty to complain, and, as made,
"is bound to consider his own individual act. Every member in
"fact stands in the peculiar situation of being party to both sides,
"insurer and insured. Certainly the general submission which
"they have signed will cover their liability to submit to this alter-
"ation."

One of the most recent cases in which the subject has been considered is *Fullenwider* v. *Royal League,* 73 Ill. App., 321, decided January 27, 1898, affirmed in Supreme Court, 180 Ill., 621. This was a case of a member of a mutual benefit society who sought to enjoin it from collecting an assessment which had been increased pursuant to a change in the rate of assessments by changing the by-laws governing the subject. In this case the member agreed in the medical examiner's blank that "if accepted as "a member, I agree to comply with, and that my membership "and all interests of the person entitled to such benefits shall be "subject to all laws, rules and usages now in force in the order, "or which may hereafter be adopted by it," and the benefit certificate was issued upon condition "that the said member com- "plies in future with the laws, rules and regulations now gov- "erning the said council and fund, and that may hereafter be "enacted by the Supreme Council to govern said council and "fund, all of which are also made a part of this contract. These "conditions being especially assented to and complied with." The case was heard fully by Chancellor Murray F. Tuley, who has sat upon the bench in Cook County, Illinois, for more than twenty years. He wrote an exhaustive and careful opinion upon the case, which was adopted *in toto* by the Appellate Court. The change in question involved an increase in rates, and also provided that four per cent. of the assessments should be appropriated to pay expenses, nothing having been taken from assessments for this purpose prior to the change. The court say:

"In making the change in the by-laws and changing the table "of rates, the Supreme Council appears to have proceeded in all "respects in the manner required by the constitution. It also "appears to have acted in good faith in changing the by-laws, and "there appears to be no ground for suspecting any fraud or im- "pure motive as influencing this action.

"This increase of assessment was the result of a change of "policy on the part of the defendant, taken after due deliberation, "upon the recommendation of advisory councils, and after some "years' agitation of the question of increasing the rates and the "creation of a reserve fund in order to put the order upon a "secure financial basis.

"The defendant, in its answer, sets forth at length the consid- "erations that induced and the reasons for this change of policy, "among others, that the experience of the Royal League had "demonstrated the insufficiency of its original table of assess- "ments, and that special assessments had to be called for, which "necessarily produced more or less discontent and injury to the "membership of the order; that the plan and new table of rates "finally adopted was based upon the following propositions, de- "duced from experience and authority: (1) That the cost of in- "surance must be based upon the average age of the membership "of the society or company furnishing the insurance; (2) that "the cost at a given age is determined by reference to certain "standard tables of mortality, which have been adopted as the "basis of computation by all well informed life insurance so- "cieties and by the insurance departments of the several states; "(3) that the increase in the average age of the members of a "fraternal insurance society is inevitable as the order grows "older in years; (4) that the number of assessments necessary "to pay current death losses must inevitably increase in each "such society unless a table of rates be provided which will en- "able the society to collect more money during the early years "of the membership than is necessary to pay death losses, thereby "providing a fund which may be drawn upon in order to avoid "special assessments during the later years of the society; that "the adoption of said new table of rates was the result of deliber- "ate judgment and great care, and that it was justified and even "rendered necessary by the action of other societies organized "and conducted upon the like general plan; that the adoption of "said new table of rates was not only expedient, but that it was

" absolutely necessary to the safety of the society and to the pro-
" tection of its members, and that if said Supreme Council had
" refused to heed the warnings of experience and the demands
" of its advisory bodies, it would have been false to the trust im-
" posed upon it.

" The complainant objects to paying the new rate of assess-
" ment, and seeks an injunction prohibiting the defendant from
" enforcing the call or assessment at the increased rate on the
" ground that the certificate issued to him constitutes a contract
" between himself and the society, by the terms of which no
" assessment can exceed $2.62; that if the defendant had power
" to change the by-laws and increase the rate to be paid, it could
" only be done as to new members and could not have a retro-
" active effect; that the by-law in any view is unreasonable, and
" therefore void. * * *

" The main question is whether the benefit certificate consti-
" tutes a contract which prevents the society from increasing the
" table of rates beyond that set forth in the by-law existing at the
" date of the certificate of membership.

" What was the contract between these parties? The certificate
" standing by itself does not measure the rights of the parties,
" but it must be read in connection with the constitution and by-
" laws of the society and the application for membership.

" The nature, objects and purposes of the society and of the
" Widows' and Orphans' Benefit Fund must also be taken into
" consideration.

" The Statute of 1893, to which the defendant has conformed
" and under which it is being carried on, defines a fraternal
" benevolent society as follows:

" ' A fraternal benevolent society is hereby declared to be a
" corporation, society or association formed, organized and car-
" ried on for the sole benefit of its members and their beneficiaries,
" and not for profit.'

" And further provides:

" ' Each society shall have a lodge system, with ritualistic form

"of work or representative form of government, and may make "a provision for the payment of benefits in case of disability and "death, or of either, resulting from either disease, accident or "old age of its members. The payment of such benefits in all "cases being subject to compliance by the member with the con- "tract, rules and laws of the society.'

"These assessment societies are peculiar in their nature, and "as said in the matter of the *Equitable R. F. Association,* 131 "N. Y., 354, they are neither stock nor exactly mutual insur- "ance companies; they could not be exactly described as such "in all respects.

"The assessments are purely voluntary, and our statutes appear "to recognize the fact in seeming to require that the governing "power shall be representative in its character. The beneficiary "members who constitute the membership of the widows' and "orphans' benefit fund are a purely voluntary association of "members for a definite purpose, to wit: to raise a fund out of "which shall be paid on the death of one of its members, to his "family or persons dependent upon him as directed, the amount "of his insurance if the assessment exceed that amount.

"The underlying idea is that of absolute equalily, equality in "the burden of providing the funds *pro rata* to benefits to be re- "ceived and equality of the benefits to be received *pro rata* the "the burden borne by those contributing to the fund.

"A scheme was devised which the governing body and its mem- "bers believed would provide a sufficient fund to pay all insur- "ance or death losses as they occurred; experience has demon- "strated that it will not do so—the necessity of seeing decreas- "ing membership and possible disruption of the society unless "some change be made was made apparent to the representative "body, the Supreme Council. It resolved to change the by-laws as "to rates by increasing the same: the old members object and "say 'our rates are fixed by the old by-laws; you have power to "increase as to new members, but not as to the old members.'

"To increase the rate as to new members only would be absurd,

"and would be useless; there would be no new members; there "would be no equality, voluntary equality of burden. Can it in "reason be contended that such an absurd position of affairs was "contemplated or was intended either in the organization of the "company or by the parties to the benefit certificate when it was "made? Was it contemplated by the parties to the certificate "that if the assessment rate mentioned in the certificate should "prove ineffectual to raise a fund sufficient to pay death losses, "that the society should go on paying them? Clearly not. Was "it contemplated that in such an event the governing body should "keep on upon the 'old lines' until by loss of members caused "by repeated special assessments, certificates would become value-"less?

"These parties, the beneficiary members and the society, were "not dealing at arm's length making a 'hard and fast' contract, "but they were making a co-operative contract arrangement, with "the good, the interest of the society and fund as much in view "as the interest of the beneficiary member. They had in view "not only the interest of the 'loved ones at home' of the member, "but also the interest of the loved ones at home of all the bene-"ficiary members of the society. Was there not an implied con-"dition that this governing representative body should alter and "change all by-laws that should be necessary to preserve the life "of the society or to accomplish the object and purpose sought "in constituting the Widows' and Orphans' Benefit Fund?

"It is not necessary, however, to imply any such condition, "for here there was an express agreement to be bound not only "by the then constitution and by-laws, but also by any new by-"laws or any change that might be made in the existing by-laws "governing the Widows' and Orphans' Benefit Fund, that the "Supreme Council might deem it necessary to make.

"It will not be denied that the parties had power to contract "with reference to future by-laws or change of by-laws, and if "they did so contract, there is no injustice in enforcing such fu-"ture or changed by-laws against the parties. There is no limi-

"tation that such change of by-laws shall not be made for the "general good of the Widows' and Orphans' Benefit Fund if it "increases the burden of some or all of its members.

"It is contended, however, that the plaintiff has a vested right "under his contract, and that no vested right under the contract "can be impaired by the society.

"As suggested by the court in 82 California, 557, a vested "right to what? It certainly is not a vested right to have the "constitution and by-laws remain forever unchanged, but if it "is a vested right, it is in a contract which gives the Supreme "Council express authority to change the by-laws existing when "the contract was made, and to make and incorporate into the "contract a new by-law or changed by-law. That is what has "been done, and therefore no vested right has been infringed. "Under such a contract no vested right could exist until the "death of the member; then would arise a vested right to have "an assessment made in pursuance of the then existing by-laws, "and the proceeds, not exceeding the limit of insurance, paid "over.

"Upon a death, what was a contract upon a contingency, be- "came a debt and a vested right to its payment. The beneficiary "member is not a creditor to the society, nor has he the right to "claim the benefit of any fund until the event happens upon "which his claim becomes payable, and it must necessarily fol- "low that it shall be subject to the by-laws then governing that "fund. The beneficial certificate holder is only entitled to the "ripened fruits of his contract; if the fruit should wither and "die before maturity, his rights under the contract are gone.

"It must be admitted that there is a conflict of authorities "upon the question as to the right of a society to change by-laws "which will affect a contract of insurance. Among the authori- "ties which seem to oppose it is one in our Appellate Court— "*N. W. Ben. Ass'n* v. *Warner*, 24 Ill. App., Ct., 357; also, *Ins.* "*Co.* v. *Connor*, 17 Pa. State, 135; *Weiler* v. *Equitable Life*,

"92 Hun., 277; *Mutual Endowment Society* v. *Essenden*, 59 "Md., 277.

"In my opinion, these cases are decided upon too 'narrow "lines' and without a full appreciation of the nature, the consti- "tution, objects and purposes of these friendly, co-operative or "assessment societies.

* * * * * * * * *

"As to the objection that the new by-law is unreasonable:

"The new rate appears to have been fixed after mature delib- "eration, and to be the result of the honest judgment of the Su- "preme Council.

"It is not for the court to undertake to say that the rate is too "large or to determine what would be reasonable; that is left by "the law and by the contract of the parties to be determined by the "Supreme Council.

"The law does not contemplate that the court shall interpose "its judgment as against the honest judgment of the governing "body selected by the parties, to determine what would be or "what would not be a reasonable rate of assessment. If there "is any reason for a complaint in this regard, it should be made "to the state auditor, who appears to be entrusted by the Statute "of 1893 with a supervisory power over these friendly societies. "The court can certainly not interfere if the evidence shows, as "it does in this case, that the governing body has acted in good "faith and upon due deliberation."

The cases which are cited by the court as seeming to oppose his view may all be distinguished from the case he decided. In the first, second and fourth it does not appear that there was an agreement to abide by future changes. In the third the decision was that by-laws might be passed pursuant to a reservation, provided they were not unreasonable, but that the by-laws under consideration in that case were not within the objects and purposes of the corporation and were consequently unreasonable.

The similarity of the change in the Royal League case and in the case now before the court is obvious. The effect of the change in the former case was an increase in the burden borne by the policy holder on account of the experience of the society which made it necessary to collect larger amounts on each assessment, or to collect more assessments. The court held the change to be a change of policy, which was decided to be within the discretion of the society, and "to be absolutely necessary for the safety of "the society and the protection of its members, and that if said "Supreme Council had refused to heed the warning of experi-"ence and the demands of its advisory board, it would have been "false to the trust imposed upon it." In the present case the effect of the change upon the policy holder was to decrease the amount of burden which he would have to bear from year to year if the former arrangements continued, and if the changes had not been made he would have had increased burdens to bear, as will be shown hereafter. The principle of the two cases is exactly the same, and if the change is for the protection of the society and for the best interests of its members the fact that one member makes complaint of the change would not relieve him from its binding effect, so long as it operates upon all alike.

The same question which was involved in the case of Fullenwider was decided in a similar case by an executive officer of the Canadian government, who stands high as authority upon fraternal insurance laws.

In the province of Ontario, Canada, the law provides for the inspection and examination of fraternal insurance societies, called, under their system, friendly societies, by an officer whose duties are similar to those of the insurance commissioner of a state. It becomes his duty to examine their plan of doing business, their laws, their table of rates, etc., and if reasonable and proper he

registers the society, which gives it a right to carry on its business. If he finds that the provisions of its laws are contrary to the laws of the country, or inconsistent, unreasonable or unfair, he refuses to register the society, thereby preventing its doing business within the province.

If a society changes its laws, this change is subject to his inspection, and if contrary to law or unreasonable, its right to do business ceases.

This officer is called the registrar of friendly societies.

One of the friendly societies of the Province of Ontario increased its table of rates; this action was protested against by certain of its subordinate bodies, and the question was submitted to J. Howard Hunter, then Registrar, from whose opinion we make the following extracts:

"In the Matter of the Insurance Corporations Act, 1892,
"and the Constitution of the Select Knights of
"Canada.

"Before the Registrar of Friendly Societies.

"In fact, the complainants themselves scarcely venture so far, "'their real objection being not to the altered mode of assess-"ment, but to the retroactive application of the new system to "the old certificates.' And this leads to the second and more "important reason that the complainants urge why the action "of the Grand Legion should be held *ultra vires*, viz.: that the "retroactive application of the new system of assessment is a "breach of the formal contract made by the Select Knights with "the complainants.

"There is no doubt that all the courts, American as well as "British, strongly disfavor any alteration made in an insurance "contract without the consent of the insured.

"But a distinction is made where the contract itself reserves "the insuring corporation the right from time to time to amend

"its rules or by-laws, and binds the assurred to compliance with "such rules or by-laws as shall from time to time be in force. "*Hobbs* v. *Iowa Mutual Benefit Assn.*, 20 Ins. Law Journal, "434; *Becker* v. *Farmers' Mutual Ins. Co.* (Sup. Court Mich.), "1882; 11 Ins. L. J., 595; *Supreme Commandery, etc.*, v. *Ainsworth*. 71 Ala., 436. In the last cited case it was laid down "that where a contract of insurance is issued conditioned that "it shall be subject to such by-laws as may thereafter be enacted "by the society, by-laws subsequently passed became a part of "the contract. Two English cases which were cited by Mr. Mc-"Watt appear to me very much in point: *Stooke* v. *Mutual* "*Provident Alliance* (Q. B. D. Pollock B. and Charles J., "27th January, 1891), reported in the Manchester Unity Col-"lection of Friendly Society cases, 1892, p. 226; and *Dixon* v. "*Thompson* (Q. B. D. Cave Vaughan and Williams, J. J., Janu-"ary 29, 1891), Ibid., p. 259. In the former case the policy "was granted on a proposal (or, as we call it, an application) "in which the applicant agreed to abide by the present rules and "regulations of the society, and by any others that may here-"after be made and certified by the Registrar of Friendly So-"cieties. A new rule was made by which the assurred was, while "on sickness allowance, deprived of all such further benefit. "Baron Pollock could see nothing unreasonable in this where "there was a special stipulation such as that above cited, and "Charles J. held that it was open to the society to raise the dues "or to reduce the benefit. The court came to the conclusion that "as the contract expressly provided that the member should be "bound by rules made from time to time, it could not be said "that the new rules were *ultra vires*. The plaintiff was there-"fore bound by them. The judgment of the County Court and "Judge, therefore, was wrong and must be reversed.

"In *Dixon* v. *Thompson*, also, the question raised involved the "validity of rules altered under a like stipulation, and the court "followed the decision in *Stooke* v. *Mutual Provident Alliance* "affirming the validity of the new rules.

"It is quite true that this right claimed by Friendly Societies "to revise their contracts of insurance is something not met with "in other insurance corporations—is, in short, a seeming anomaly "in the law of contract. But it is to be remembered that Friendly "Societies when first undertaking sickness and disability bene- "fits were venturing into an entirely unoccupied and unexplored "region of insurance, where the proper rates of premiums must "have been mere guesswork and for long years afterwards must "have continued a matter of experiment. It is only in our own "day that such a body of experience has accumulated as to en- "able the managing officers of such societies to say what are "proper rates of premium for the benefits promised. Now, where "a society started out on an erroneous financial basis, and has "begun to feel the strain which an increasing ratio of old mem- "bers brings, it would be extremely serious for the old mem- "bers—now, perhaps, uninsurable elsewhere—if their own society "could not recede from its former error, and amend the rates, "but must helplessly await the collapse. It would, of course, be "better (if at all possible) in amending the rates to avoid retro- "active measures, but sometimes this can not be done. If the "old certificate holder has to pay something more than under "the old rule he is not without compensation, for in his certificate "he now holds an improved security—a better assurance that "the society will be able to fulfill its obligations."

In the case of *Supreme Commandery* v. *Ainsworth*, 71 Ala., 436 (1882), the whole subject is carefully considered. In this case when the policy was issued there was no provision in it against suicide. A subsequent by-law provided that suicide would avoid the policy. A general law of the association provided that every member should "comply with the general laws of the order "then in existence, or which might thereafter be enacted," and the certificate of membership was issued and accepted by him in writing, "subject to the laws of the order now in force, or which "may hereafter be enacted by the Supreme Commandery." Sub-

sequently the above change in the by-laws was made. In deciding the point the court said:

"With a view of excepting from the operation of the policy "any intended self-destruction, whether the assured is sane or "insane at the time of its commission, insurance companies are "in the habit of inserting in policies a provision, the equivalent "of that expressed in the law of the association now under con- "sideration. The exception as to the insane has been supported, "and it is said to be as much the right of the insurer to stipulate "for exception from liability in the event of intentional self- "destruction by the insane, as to stipulate for an exemption from "liability because the hazard of loss is increased from the fact "of the insured engaging in occupations perilous to life, or tak- "ing up residence in an unhealthy climate. In this respect the "law adds a new term to the contract, relieves the association "from any existing liability, and lessens the value and security "of the certificate to be assured. It is not claimed that there is "an inherent power in the association by the adoption of a by- "law to work such radical changes in its existing contracts. The "power is derived from and depends upon the stipulations of the "contract at the time it was made; the stipulations were ex- "pressed in varying terms, and several of them import no more "than would be implied—the observance by the insured of the "requirements of the association, such requirements as were rea- "sonable and intended to promote the harmony of the associa- "tion, and the purposes and objects for which it was formed. "They import also obedience to the by-laws, so far as reasonable, "consistent with the charter and law of the land. We do not "construe them as reserving, or as intending to reserve to the "association, the power to change or avoid its contracts, to lessen "its responsibilities, or to divest its members of rights. This is "not the proper office of a by-law and from the general expres- "sions to which we are referring it can not be fairly presumed or "intended that it was contemplated to affect the members by "other than such by-laws, as it was within the competency of the

"association to enact. But, in addition to these, the averment "of the plea is that the certificate was accepted by the assured "subject to the laws of the order now in force, or which may be "hereafter enacted by the Supreme Commandery. These are "words of large signification, and clearly express that the assured "consented that the contract should be subject to future, as well "as existing by-laws. Parties may contract in reference to laws "of future enactment—may agree to be bound and affected by "them as they would be bound and affected if such laws were "existing. They may consent that such laws may enter into and "form parts of their contracts, modifying or varying them. It is "their voluntary agreement which relieves the application of such "laws to their contracts and transactions from all imputations of "injustice. The members of associations, created for purposes "and objects like those which seem to be the purposes and ob-"jects of this organization, may very properly be required to "assent that the contract conferring upon them these rights shall "be subject to and depend upon the future, as well as the exist-"ing laws adopted by the governing power. The fundamental "principle of such organizations is the mutuality of duty and "equality of rights of the membership without regard to the time "of admission. This can not well be preserved if the members "stipulating for benefits were not required to consent that they "would be subject to future as well as existing by-laws. Time "and experience will develop a necessity for changes in the laws, "and, if the consent were not required, there would be a class of "members bound by the changed laws and a class exempt from "their operation. The case before us is an illustration. Of the "legality and propriety of the provisions relieving the associa-"tion from liability, if a member while insane deprived himself "of life, there is no good reason to question. If no other reason "could be given, that it relieves the association from litigating "with the representatives of a deceased member, the distressing "question of his sanity would be sufficient. If the law was ap-"plied only to certificates issued subsequent to its enactment,

"there would be a class of members having certificates of greater "value than the certificates held by another class; yet each class "would be subject to the same assessments and the same duties. "There is but little room, if any, for the apprehension that ad- "vantage will be taken by the governing body of the assent of the "member to be bound and affected by subsequent laws to impose "upon him unjust burdens or to vary the contract, save so far "as an alteration or modification of it may be promotive of the "general good. Subsequent or existing by-laws are valid only "when consistent with the charter and confined to the nature "and objects of the association. While a subsequent law, because "of the assent of the members, may add new terms or conditions "to a certificate, terms or conditions reasonably calculated to "promote the general good of the membership, and may be valid "and binding, it does not follow that a law, operating the de- "struction of a certificate or a deprivation of all rights under it, "would be of any force. *Korn* v. *Mutual Assurance Society*, 6 "Cranch, 192. Without pursuing the discussion of the ques- "tion, we are of the opinion that the parties intended that the "certificate should be subject to the laws of the association "adopted subsequent to its issue—laws which, if they had been in "force at the time of the issue, would have entered into and "formed a part of it."

In the case of the *Supreme Lodge of Knights of Pythias* v. *Knight*, 117 Indiana, 489, 497, the beneficiary was to receive $1 from each member of a class to which the member belonged, not to exceed $2,000. The number of members in the class was more than 16,000, when the by-laws were so changed as to transfer the greater part of this class to a preferred class, thereby reducing the number to 173. The court said:

"The duly chosen and authorized representatives of the mem- "bers alone are vested with the power of determining when a "change is demanded, and with their discretion courts can not "interfere. Were it otherwise, courts would control all benevo-

"lent associations and all fraternities. It is only when there is "abuse of discretion and a clear, unreasonable and arbitrary in- "vasion of private rights that courts will assume jurisdiction "over such societies or corporations; with the questions of policy, "doctrine, or discipline, courts will not interfere. Courts will "compel adherence to the charter and to the purpose for which "the society was organized, but they will do no more.

"*Stadler* v. *Dist. Grand Lodge*, 3 Am. Law Reg., 589.

"*Hussy* v. *Gallagher*, 61 Ga., 86.

"To justify interference by the courts and warrant the over- "throw of by-laws enacted in the mode prescribed by the by- "laws, it must be shown that there was an abuse of power or that "the later by-law is unreasonable. It is not enough to show that "a better or wiser course might have been pursued, for it must "be shown, that there was an abuse of discretion or that the by- "law is so unreasonable as to be void.

"We do not affirm that a benefit society may, by a change in "its by-laws, arbitrarily repudiate an obligation created by a pol- "icy of insurance, but we do affirm that, where a change is regu- "larly made in its by-laws, and the motive which influences the "change is an honest one, to promote the welfare of the society "and the members are all given an opportunity to avail them- "selves of the change, no actionable wrong is done the members "or their beneficiaries. It may sometimes happen that the inter- "ests of one individual, or of a few individuals, may be im- "paired, but it is the right, and, indeed, it is the duty of the "society to protect the interests of the many rather than of the "few. Persons who become members of such societies must take "notice of this, and one person can not, therefore, demand that "the welfare of the society and the interests of the many be sacri- "ficed for his sole benefit."

The case of *Supreme Commandery* v. *Ainsworth*, above, deciding that a subsequent by-law avoiding the policy for suicide will be valid if the consent of a member to abide by future enact-

ments is given in advance, is followed by two cases in southern states. *Supreme Lodge K. of P.* v. *LaMalta* (Tenn., 1895), 31 S. W., 493, and *Daughtry* v. *K. of P.* (48 La. Ann., 1896), 20 Southern, 712. In the former the agreement was: "I hereby "agree to conform to and obey the laws, rules and regulations of "the order governing this rank now in force, or that may hence- "forth be enacted, or to submit to the penalties therein con- "tained." This agreement was in the written application of membership as it is in the present case. In the second case the agreement was: "And in consideration of the payment hereafter "to said Endowment Rank, of all monthly payments as re- "quired and the full compliance with all the laws governing this "rank now in force, or that may hereafter be enacted, and of "being in good standing under said law, etc."

In the case of *Bowie* v. *Grand Lodge*, 99 Cal., 394; 34 Pacific, 103 (1893), a certificate with coupons attached provided that the members should be "entitled to participate in the special benefit "fund of the order in an amount to be computed according to the "laws of the order, not to exceed the amount named in said "coupons respectively," and the constitution of the order contained a provision that the constitution and laws relating to and governing the beneficiary fund might be amended by a three-fourths ($\frac{3}{4}$) vote of the Grand Lodge. A change of the laws regularly made by the Grand Lodge limited the amount to be paid upon a maturing coupon to a proportionate share of one assessment for the payment of all coupons then maturing. It was held that this did not impair the obligation of the contract, though a different rule of computing the amount to be paid existed at the date of the certificate. The court says:

"This certificate when read and construed as it must be in "connection with the constitution and laws of the defendant ex-

"isting at the time of its issuance, and which provided that a "change might be made in the laws of defendant governing such "fund, means that the plaintiff is to participate in the special "benefit fund of defendant, in an amount to be computed ac- "cording to the laws of defendant in force when the several cou- "pons shall mature. Parties may contract in reference to laws "of future enactment—may agree to be bound and affected by "them as they would be bound if such laws were existing. They "may consent that such laws may enter into and form parts of "their contract, modifying or varying them. It is their volun- "tary agreement which relieves the application of such laws to "the contracts and transactions from all imputation of injustice."

Citing:

Supreme Commandery v. *Ainsworth*, 71 Ala., 436,

And also,

Stohr v. *San Francisco, etc.*, 82 Cal., 557.

In *Bogardus* v. *Insurance Company*, 79 Mich., 440 (1890), the defendant was a mutual fire insurance company maintained by certain fees and assessments. A by-law was passed subsequent to the issuance of the contract which exempted the company from liability for losses caused by fire from steam power used on the premises of any member. In his application plaintiff agreed to observe and be governed by all the conditions of the charter and by-laws as they then existed and any changes that might be thereafter made in the same. The plaintiff had notice of the adoption of the by-law, and made no objection. His property was destroyed by fire from a steam engine used by himself. The court say:

"This policy was issued and received upon the express agree- "ment that it was subject to all changes that should be there- "after made in the charter and by-laws, and such contract is valid. "The defendant was a mutual insurance company; the plaintiff

"as a member had equal voice with the others in the manage-
"ment of its affairs. The by-law was regularly adopted. Under
"the charter he could have had his policy cancelled and with-
"drawn. By his conduct he assented to the by-law and the change
"in the terms of his policy caused thereby. This is not in con-
"flict with the principle established in *Becker* v. *Insurance Com-*
"*pany*, 48 Mich., 610. In that case there was no agreement in
"the policy that it should be subject to change. There the policy
"was declared to be subject to the charter and by-laws, which
"meant, of course, the charter and by-laws as they then existed."

The case of *Becker* v. *Insurance Company*, distinguished above, is one ordinarily cited in support of the contention of the plaintiff herein, and discloses the construction for which we contend. The question is whether there is an agreement in the policy that it should be subject to change.

In the case of *Sargent* v. *Knights of Honor*, 158 Mass., 557 (1893), the application contained the following agreement: "I, "Otis Sargent, having made application to participate in the "benefit fund, do hereby agree that compliance on my part with "all the laws, regulations and requirements now in force, or that "may hereafter be enacted by said order, is the express condition "upon which I am to be entitled to participate in the benefit "fund," and the certificate contained a similar provision and an article of the constitution provided that it might be amended at any regular meeting of the Supreme Lodge by a vote of two-thirds of its members present. Originally "the benefits must "have been paid to the family of the member, or as he might "direct." The order was originally incorporated in Kentucky, but later was reincorporated in Missouri, and a new charter limited the persons who might receive benefits "to such member or "members of his family, or person or persons dependent on the

"member, as he might direct or designate by name." The certificate had been originally payable to Miss Blaisdell, and after the reincorporation the member made an affidavit swearing that she was a "dependent," and a new policy was issued accordingly, but the fact was otherwise, and the court held that the member might have changed the beneficiary at any time; that the person named was not entitled to the benefit, and upheld the right of the order to make such a change.

In the cases of *Hobbs* v. *Association*, 82 Iowa, 107, and *Courtney* v. *Association*, 53 N. W., 238, the rule is asserted that no change may be made in the contract unless the power to alter or amend is reserved, and it is held that the cases are not within the rule. These are examples of the second class of cases mentioned above.

The case of *Chadwick* v. *The Order of Triple Alliance*, 56 Mo. App., 463, 474, is another of the same class.

The cases cited show that this court and the Appellate Courts and courts of last resort in the following states: Alabama, Tennessee, Louisiana, Indiana, Illinois, California, Massachusetts, Missouri, Iowa, Pennsylvania, Michigan, New York, Vermont and Wisconsin have asserted the principle that changes in the by-laws will be valid and binding when there is a provision in the contract for the future enactment of such by-laws.

It is also to be noted that the changes did not "lessen the value "of the policy." The beneficiary designated has nothing but an expectancy, contingent upon the continued good standing of the member until his death, and subject to be divested at any time by having the member exercise his right to change the beneficiary, Article VII., Section 6.

Hopkins v. *Northwestern Life Assur. Co.*, 99 Fed., 199.
Wist v. *Grand Lodge*, 22 Ore., 271, 29 Pac., 610.

The only right which the member had if he continued in good standing was to designate the person to whom the benefit should be paid at his death.

The sum to be paid was not fixed. The contract contained, as a part of itself, the agreement to abide by changes thereafter made in the constitution, which was also a fundamental part of the contract, and which gave to the contract all its vitality. What, then, was the value of his policy? Up to the time of the first change, in 1889, it was the value attached to an expectancy to have his beneficiary receive the amount which every other member expected to have his beneficiary receive, namely, the amount in the death fund arising from one assessment not to exceed $5,000, and all the money paid in assessments, depending wholly upon retention of membership and the collection of assessments from the members. Up to this time Jarman had paid the amount which was necessary to fulfill this expectancy to the deceased member's beneficiaries, namely, the cost of the insurance made necessary by the death losses. During this period he enjoyed the indemnity secured by his contract. Had his death occurred before the change in the by-laws his beneficiary would have received the face of the policy and all assessments. After the first amendment was made, it was applied to every contract in force, and the expectancy from that time was that every member's beneficiary should receive the amount in the death fund arising from one assessment, not to exceed $5,000, and all the money paid on the policy in assessments during the first five years, and after this amendment no beneficiary did receive more than this; Jarman, from this time, paid only the cost of the insurance on this basis and no more, and he no longer paid the cost of the insurance on the old basis. By continuing his payments after this change in his

contract and with knowledge of it and accepting the benefits thus afforded in the reduction of assessments exacted of him to meet claims arising upon the death of other members he acquiesced in the new arrangements, and his beneficiary should be regarded as estopped to question their propriety. When the other amendments were made and applied to the contracts outstanding, the members' beneficiaries received the amount in the death fund arising from one assessment, not to exceed $5,000, and Jarman ceased to pay the cost of the insurance on the old basis, as before.

If he had died at any time when he was paying for more than $5,000 his beneficiary would have received the amount upon which he was paying the cost as others did, but should she receive the additional sum after he has ceased to pay for it? He is charged with notice that the Company, which was purely mutual, was not charging him for more than $5,192 of insurance after 1889, and had never charged him for more than this, and he was likewise charged with notice of the second change and its application to his and all other policies in force. If he desired to continue to carry the additional amount, he should have withdrawn from membership or offered to pay the excess.

Haydell v. *Mutual Res. Fund,* 104 Fed. Rep., 718.

If the company had increased the cost to the old members from the time the change was made in proportion to the amount of insurance which the court says they were then carrying, the court then, under the doctrine in the *Haydel* case, would have upheld this construction of the amendment. In other words, if experience in this society shows that it is necessary to raise more funds to pay the cost of insurance, the power resides in the society, as in the Jarman case, or in the board of directors as provided by the contract in the *Haydel* case, to increase the cost of the insur-

ance, proportionately; but no matter what the stipulations of the parties that they are bound together for the purpose of mutual insurance and that they will abide by future amendments which are found to be necessary as experience demands, the members acting in the constitutional way in regular meeting are not competent to say: "We have banded together to carry out a plan "which is unwise. We will now abandon that part of the plan "which seems to us unwise and go forward from this time upon "a sounder basis." On the contrary, if acting together for the welfare of the society in good faith, they make an amendment which, pursuant to the terms of their contract and the law on the question, becomes a part thereof as though written therein, the court holds that that amendment may be made binding as a condition of membership resting upon those who thereafter join, upon whom it would be binding without reference to such an agreement, but can not be applied to the contracts of the members who made the change. If this is so, and the members thereafter joining can not be made to bear a proportion of the burden resulting to the old class, that old class is in a pool, receiving no new life so far as this particular feature of this contract is concerned which will finally reduce itself to a few members, say three, two of whom will have to contribute to the other one all the money he has paid in assessments, or else the difference which is not contributed by them must come from the other members who have joined subsequent to the change. If the latter is the case, the construction of the court not only makes it impossible to maintain the membership on a basis of exact equality, but makes it necessary and unavoidable that the members joining after the amendment shall contribute to the payment of the benefits to the members of the old class disproportionately to the amount which the old members contribute to the society, and all that has been

said will likewise be true of the second change. The result of these changes, if they are to be applied to new contracts, but not to old contracts, is to divide the membership into classes from time to time, as we have shown, which can not be recuperated by new blood and which, if they enjoy the benefits provided by the constitution before the changes were made, must either contribute the whole of the additional benefits themselves and thus place upon the surviving members of the class a larger and larger burden, or else the additional benefits must be partially contributed by the new members, which is an injustice to them and will deter new members from coming into the society. It is a fundamental principle of assessment insurance that inasmuch as it is based upon the fact that the member only pays the cost of the insurance from time to time, that is, the amount made necessary by the death losses and the expenses, that new blood must be brought into the membership continually, or the society can not exist, and the recent history of assessment insurance shows this to be a fact. On the other hand, if those changes are applied to the membership as a whole, each member contributes to the losses resulting from the deaths of other members exactly on the same basis, and if any change is made, the change affects all and all still continue to contribute upon the same basis and to expect the same benefits for the same contribution. In the case of increase in assessments where the members are all maintained upon one basis, they still continue to contribute proportionately to the amount of insurance they carry. If instead of an increase of assessments the converse of this proposition is put in force and the expected benefits are reduced, the members still continue to pay exactly in proportion to their benefits. As a matter of fact, it might have seemed more wise when these changes were made to apply them

to new contracts only, for this would have retained in force a large amount of insurance for which assessments might have been made in proportion to the amount each member was carrying, but the fact is that this was not done, and that it would not have been wise. The changes were applied to old contracts and the construction adopted has made it unnecessary for the members to contribute anything to carry out the plan of insurance which the court now says the old members were entitled to have carried out. It will now be impossible to put in force, as to old members, the plan which the court says should have been carried out with equity and justice to the other members of the society. It means dissatisfaction to all the members and perhaps disorganization and failure. In such a case as this which affects not alone Jarman's beneficiary, but affects every member and every member's beneficiary, the decision should be controlled by considerations of justice and equity for all and not for Jarman's beneficiary alone. The perpetuity of the society means much to these members and to their beneficiaries, because a large percentage of those holding contracts calling for the payment, as the court says, of all the money paid in assessments are now uninsurable risks, both on account of age and their condition of health, and if the society fails they will be unable to place their insurance elsewhere and will lose all in the effect to gain a small part.

The writer is aware that this argument is too long. But in so far as it is made up by extracts from opinions it is hoped the labors of the court in its consideration may be facilitated. The last question discussed is of such vital interest to assessment companies that, now that it is to be submitted to this court, even on this preliminary application, it is most desirable that its presentation be in some sort adequate.

It is thought that the nature of the questions involved is such as fairly to justify this application. The question just referred to is vital to this and similar companies. Unless this court deals with it the opinion below is likely to have much weight in its ultimate decision. It is thought that the learned court fell into grave error on this question; and also upon the question of constitutional power discussed in the opinion. On another question the court was divided. These considerations seem to warrant an allowance of the writ.

Respectfully submitted.

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No. 254 Oct. Term 1901

Brief of Gregory & Hicks for Pet.

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Supreme Court of the United States

OCTOBER TERM, A. D. 1901.

Filed April 18, 1902.

NO. 254.

THE KNIGHTS TEMPLARS AND MASONS LIFE INDEMNITY COMPANY,

Petitioner,

vs.

ROSA R. JARMAN,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals, for the Eighth Circuit.

SUPPLEMENTAL BRIEF AND ARGUMENT FOR THE PETITIONER.

S. S. GREGORY,
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(18,065.)

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This case is before the court pursuant to a writ of certiorari issued March 11, 1901, to the Circuit Court of Appeals for the Eighth Circuit.

Without restating the facts which appear fully in the petition for the writ the point will be taken up in the order adopted in petitioner's original brief, which is referred to and made a part of this argument.

I.

The suicide statute of Missouri is at most only a declaration of the policy of the state with reference to the defense of suicide. The legislature said that no insurance company should evade the risk of suicide by a stipulation with the insured, unless the insured intended to kill himself when he applied for insurance. Later an act was passed providing for the incorporation and regulation of a new class of companies, the distinguishing characteristic of which was the method of collecting revenue, by an "assessment upon others "holding similar contracts." (Sec. 5860, Rev. St. Mo., 1889.) The legislature saw fit, for reasons of its own, to provide by this new law that foreign companies doing business under it should not be subject to the general insurance laws, including the suicide statute.

Haynie v. *Indem. Co.*, 139 Mo., 416; 41 S. W., 461, 462.

Sparks v. *Indem. Co.*, 61 Mo. App., 109.

Hanford v. *Mass. Ben. Assn.*, 122 Mo., 50; 26 S. W., 680, 682.

Jacobs v. *Omaha Life Assn.*, 142 Mo., 49; 43 S. W., 375.

Aloe v. *Mut. Res. Fund Assn.*, 147 Mo., 561; 49 S. W., 553, 556.

Aloe v. *Fidel. Mut. Life Assn.*, 55 S. W., 993, 998.

McDonald v. *Bankers' Life Assn.*, 55 S. W., 999, 1001.

Elliott v. *Des Moines Life Assn.*, 63 S. W., 400, 406.

By its compliance with the act of 1887 (Rec., 39), and

by the certificate of authority which it received from the insurance department to do business under said act, the defendant company became "subject to the provisions of "this act and each member submitted himself and his con- "tract to the provisions and limitations of said act."

Ellerbe v. *Aid Association*, 106 Mo., 13, 17.
Ellerbe v. *Benefit Assn.*, 114 Mo., 501, 507.

In these cases the associations had reorganized under the law of 1887 and afterwards became insolvent. Assessments had been made to pay certain benefits, and the question was whether the proceeds should be distributed according to the old law or according to the law of 1887 and it was held that when the companies were reorganized the old contracts were submitted to the new law and became subject to it. The principle is the same here. The policy of the state in reference to assessment insurance was changed by the statute of 1887, and this change in policy permitted the contract of the parties to take effect in the form in which it was first written. In addition to the cases cited in our original brief the following are instructive.

In *Butler* v. *U. S. Savings & Loan Co. et al.*, 97 Tenn., 679; 37 S. W., 385, the corporation had taken a mortgage on real estate in Tennessee without first complying with a statute requiring registration of corporation charters with the Secretary of State and the filing of a copy in the county where the property was situate, but before the suit was brought it complied with the law. A bill was filed to enforce a vendor's lien against the mortgagor in which the mortgage was attacked as void and inoperative and the Chancellor so held. After the decree was entered and the mortgagee, de-

fendant, had appealed, an act was passed postponing the foreclosure of such mortgages for two years and validating contracts, made by corporations, so in default. It will be remembered that the constitution of Tennessee contains a provision which prohibits the passage of "a retrospective law, "or law impairing the obligation of contracts." The Supreme Court, however, quoted with approval the language used by the Supreme Court of the United States in *Gross v. U. S. Mortgage Co.*, 108 U. S., 477; 2 Sup. Ct., 940, as follows:

"That the act in question is not repugnant to the consti-
"tution, as impairing the obligation of a contract, is, in view
"of the settled doctrines of this court, entirely clear. Its
"original invalidity was placed by the court below upon the
"ground that the statutes and public policy of Illinois for-
"bade a foreign corporation from taking a mortgage upon
"real property in that state to secure a loan of money.
"Whether that inhibition should be withdrawn was, so far,
"at least, as the immediate parties to the contract were con-
"cerned, a question of policy, rather than of constitutional
"power. When the legislative department removed the in-
"hibition imposed, as well by statute as by the public pol-
"icy of the state, upon the execution of a contract like this,
"it can not be said that such legislation, although retrospec-
"tive in its operation, impaired the obligation of the con-
"tract. It rather enables the parties to enforce the contract
"they intended to make. It is, in effect, a legislative dec-
"laration that the mortgagor shall not, in a suit to enforce
"the lien given by the mortgage, shield himself behind any
"statutory prohibition or public policy which prevented the
"mortgagee, at the date of the mortgage, from taking the
"title which was intended to be passed as security for the
"mortgage debts,"

and held that the mortgage was valid. Complainant contended further that his rights were fixed by the filing of a bill, prior to the passage of the statute, but the court recited

a clause in his original contract which provided that his lien should be second to the mortgage, and said:

"Even if complainant could at all invoke the doctrine of "vested rights, he is in no condition, on this record, to com- "plain of this legislation as retrospective, within the con- "stitutional prohibition, when its effect is to place him in "the exact position which he contracted for at the time of "the execution of his deed."

The same language is expressly applicable to this case.

The measure of retrospective legislation is to ascertain whether or not it takes away any vested right which existed before the new law became operative. Thus, in *Leete* v. *State Bank*, 115 Mo., 134; 21 S. W., 788, 792, the Supreme Court of Missouri passes upon the statute of Missouri providing that the personal property of married women shall be their separate property, and further providing: "This "act shall not affect the title of any husband to any per- "sonal property reduced to possession, with the express as- "sent of his wife," given in writing. The court stated the rights which the husband had in respect to the wife's personal property the day before this act went into effect, and proceeded to say that these were vested rights arising out of contract or the principles of the common law, which could not be taken away by the legislature.

In *Hope Mutual* v. *Flynn*, 38 Mo., 483, the court said:

"A statute which takes away any vested right acquired "under existing laws, or creates a new obligation, or im- "poses a new duty or attaches a new disability in respect "to transactions or considerations already passed, is to be "deemed retrospective or retroactive."

Again, in *Fisher* v. *Patton*, 134 Mo., 52; 33 S. W., 451,

456, in discussing an amendatory act and the power of repeal, the court said: "The amendatory act can not affect "vested rights, and plaintiff's rights are vested." Plaintiff's rights in this case depended upon a contract between him and a building and loan association of which he was a member, as made by a by-law, and the law under which the association was incorporated.

Does it appear that the law of 1887, in effect repealing the suicide statute of Missouri as to assessment companies, comes within the tests of a retrospective law? What right was vested in Jarman, or in his beneficiary, by virtue of the existence of the statute in question? Did he acquire a vested right to commit suicide, that is, to take his own life, while he was in sound mind, without thereby avoiding any insurance policy he may have had providing for such avoidance? He did not have this right at common law, even if there was no provision in the contract respecting suicide.

> *Ritter* v. *Mutual Life Ins. Co.*, 169 U. S., 139; 18 Sup. Ct., 300, 305.

Jarman's beneficiary could not acquire anything but an expectancy during his lifetime, because the right was reserved to him to change his beneficiary at any time without her consent.

> *Martin* v. *Stubbings*, 126 Ill., 387; 18 N. E., 657.
>
> *Hopkins* v. *North Western Life Assn.*, 99 Fed., 199.
>
> *Wist* v. *Grand Lodge*, 22 Ore., 271; 29 Pac., 610.
>
> *Society* v. *Burkhart*, 110 Ind., 192; 10 N. E., 79, 80, and 11 N. E., 449.

Sabin v. *Phinney,* 134 N. Y., 423; 31 N. E., 1087.

Chambers v. *Supr. Tent* (1901), 49 Atl. (Pa.), 784.

Carpenter v. *Knapp* (1898), 70 N. W. (Ia.), 765, 767, and cases there cited.

Supr. Coun. v. *Morrison,* 16 R. I., 468; 17 Atl., 57.

Peterson v. *Gibson,* 61 N. E. (Ill.), 127.

Is it not more reasonable to say that the legislature intended to deny to insurance companies the *defense* of suicide as a matter of policy, and later decided to withdraw assessment companies from the operation of the law denying such right?

Another test which has been applied is to determine whether or not the new law creates for the parties a contract which did not before exist. This can not be said to have been done by the law of 1887, for the contract of the parties was to do that which was entirely within the law and consistent with good morals, except for this prohibitive statute. Its repeal rather enabled the parties to enforce the contract as it was made. In a certain contingency, quite remote, the law would not permit the parties to enforce a certain provision of the contract: in such event there was no remedy for the company, and the new law enabled the parties to enforce the contract by taking away the obstruction to the remedy which existed, by virtue of the prohibition of the statute. Thus, in *Campbell* v. *Holt,* 115 U. S., 620; 6 Sup. Ct., 209, 213, where this court was discussing a change affecting a statute of limitations, the court said:

"There are numerous cases where a contract incapable "of enforcement for want of a remedy, or because there is "some obstruction to the remedy, can be so aided by legis- "lation as to become the proper ground of a valid action; "as in the case of a physician, practicing without license, "who was forbidden to compel payment for his service by "suit. The statute being repealed which made this pro- "hibition, he recovered in the court a judgment for the "value of his services on the ground that the first statute "only affected the remedy. (*Hewitt* v. *Wilcox*, 1 Mete., "154.) Of like character is the effect of a repeal of the "laws against usury, in enabling parties to recover on con- "tracts in which the law forbids such recovery before the "repeal. (*Wood* v. *Kennedy*, 19 Ind., 68; *Welch* v. *Wads- "worth*, 30 Conn., 149; *Butler* v. *Palmer*, 1 Hill, 324; "*Hampton* v. *Com.*, 19 Pa. St., 329; *Bauer* v. *Nelson*, 9 "Gill., 304.) In all this class of cases the ground taken is "that there exists a contract, but, by reason of no remedy "having been provided for its enforcement, or the remedy "ordinarily applicable to that class having, for reasons of "public policy, been forbidden or withheld, the legislature, "by providing a remedy where none exists, or removing the "statutory obstruction to the use of the remedy, enables the "party to enforce the contract, otherwise unobjectionable."

So, in *Curtis* v. *Leavitt*, 15 N. Y., 1, 85, a corporation having the right to set up usury under the law existing at the time of making the contract, was cut off from the defense by a subsequent law prohibiting corporations from making it, and it was not held to be retrospective.

In *Berry* v. *Clary*, 77 Maine, 482; 1 Atl., 360, a person having made a note on Sunday set up the fact in defense, but a later statute was passed providing that such defense should not be made unless the consideration received had been returned, and it was held that there was no vested right in the law as it existed when the contract was made, and that the new law cutting off the defense was not retrospective.

In *Medical College* v. *Muldoon*, 46 Ala., 603, a satute imposing upon foreign insurance companies doing business in Mobile the annual payment of $200 to a certain college, was repealed before trial of a suit to recover the amount due up to the time of the repeal. It was held that the college had no vested right to recover.

In *Insurance Co.* v. *Cushman*, 108 U. S., 51, 65; 2 Sup. Ct., 408, the appellant had become a purchaser at a decretal sale under a mortgage and the statute in force at the time of making the mortgage provided for 10 per cent. interest on the amount bid at such a sale. Before the sale this rate was reduced to 8 per cent. by an amendment of the law. In reply to the claim that the mortgagee had a vested right in the statute, the court held that a decretal sale might never have been made, that the mortgagee might not have been the purchaser, and, finally, that these contingencies were too remote; that the change in the law did not constitute an impairment of the contract.

In *Hartford Fire Insurance Company* v. *C., M. and St. P. R. R. Co.*, 62 Fed., 904, 909, a lease was executed by a railroad company for a part of its grounds for the erection of a storage warehouse, with a clause releasing the company from liability for damages to the property caused by fire originating from sparks or through negligence of its employes. At the time the lease was executed, the law, under a decision of the Supreme Court, was that such a condition was against the public policy of the State of Iowa. After the contract was made and before suit was brought the Supreme Court overruled the case relied upon; after citing

Ewell v. *Daggs,* as quoted in petitioner's original brief, the court said:

"The rule applicable to cases of the character of that now "before the court wherein the party *seeks to evade the obli-* "*gation of the contract* to which he is a party, on the ground "of *public policy*, is that the court shall not render its aid "to enforce the contract, *if at the time the aid is sought* "*the contract is contrary to the then existing public policy.* "The court in such case *refuses its aid* for the enforcement "of the contract, *not because such is the right of either of* "*the contracting parties*, but because the *public interests* "*are adverse* to the enforcement of the contract. If, how- "ever, at the time when the aid of the court is sought to en- "force the terms of an existing contract, the *public inter-* "*ests do not* demand that the court should refuse this aid "in enforcing the contract according to its terms, the court "would *not be justified* in refusing its aid simply because "*at some previous time under the then existing laws*, and as "circumstances then were, such aid would have been re- "fused if then demanded."

It was held that as the then existing policy did not prohibit the railroad company from exempting itself from liability, etc., the clause of the lease might be enforced.

An examination of all the authorities available touching the subject leads to the conclusion that where a substantial right accrues to an individual from the provisions of the contract of the parties, or arises from general principles of the common law, or from statutes in harmony with the contract and upon the existence of which its enforcement depends, the individual acquires a vested right to have the law remain unchanged as to the contract or subject-matter in question. But, on the other hand, when a statute is in existence at the time of making a contract which denies to one of the parties thereto the assistance of the courts in the en-

forcement of the contract or of some provision of it, making that provision void or inoperative, such a statute is declaratory of the policy of the state with regard to the class of contracts mentioned; the one party is affected adversely by the prohibition and has no remedy for the time being, but the opposite party does not thereby acquire any vested right to have the policy of the state remain unchanged, and the legislature has power to make the change; thereby restoring the remedy or defense to the party who was until then under a disability.

There is no hard and fast line between that which is inviolable and that which is not, but it is confidently asserted that a prohibitive statute cutting off a defense provided for in a contract, to be effective in a stated contingency, was not intended to be within the constitutional limitation. Every case must be determined upon its own facts.

In *Lovern* v. *Lamprey*, 22 N. H. (2 Fost.), 434, a statute providing that any estate acquired by a testator after making his will shall pass thereby, if such appear to have been his intention, was held not to be retrospective in its operation on a will made before its enactment, in that it changes the rule of construction, so that after-required property passed by the will, which would not have passed by the common law; for until the death of the testator no rights vested under the will. In that case the statute operated upon an instrument in which there was no vested right until his death. So here the statute of 1887, acted upon a contract, before then subject to a prohibitive statute, there being, however, no vested right in anyone until the death of the insured.

In *Kring* v. *State of Missouri*, 107 U. S., 221; 2 Sup. Ct., 443, the question of *ex post facto* legislation was exhaustively discussed, and Mr. Justice Matthews wrote a dissenting opinion, in which Chief Justice Waite, Mr. Justice Bradley and Mr. Justice Gray concurred. He said in the course of the opinion:

"It is doubtless quite true that it is difficult to draw the "line in particular cases beyond which legislative power "over remedies and procedure can not pass without touch- "ing upon the substantial rights of the parties affected, as "it is impossible to fix that boundary by any general words. "The same difficulty is encountered, as the same principle "applies, in determining, in civil cases, how far the legis- "lature may modify the remedy without impairing or en- "larging the obligation of contracts. Every case must be "decided upon its own circumstances, as the question con- "tinually arises and requires an answer. But it is a familiar "principle that, before rights derived under public laws "have become vested in particular individuals, the state, "for its own convenience and the public good, may amend "or repeal the law without just cause of complaint."

Foreign insurance companies were permitted to do business in Missouri upon condition, among other things, that their contracts should be subject to the provisions of the suicide statute, and such conditions must be and remain within the power of the legislature to continue, alter or remove, according to the demands of the public interest. There can be no vested right in the company or the individual policy holder to have the conditions remain the same; though the legislature would not, in any event, be competent to change or avoid the terms of a contract entered into voluntarily by the parties, by a subsequent statute. So, in the case of *Conn. Mut. Life Ins. Co.* v. *Spratley*, 172 U. S., 602; 19 Sup. Ct., 308, the State of Tennessee had prescribed that

a company seeking to do business within its border should appoint an agent upon whom service of process might be made, and the company complied with the act. Afterwards the state provided that service on foreign corporations might be made upon other agents. Service was made upon a special agent of the company, judgment went by default, and the company brought its bill to set aside the judgment, on the ground that it had a right to be served under the provisions of the former law. Discussing the later statute this court went on as follows:

"Statutes of this kind reflect and execute the general pol-
"icy of the state upon matters of public interest, and each
"subsequet legislature has equal power to legislate upon the
"same subject. The legislature has power at any time to
"repeal or modify the act granting such permission, making
"proper provision, when necessary, in regard to the rights
"of property of the company already acquired and pro-
"tecting such rights from any illegal interference or in-
"jury. (*Douglas* v. *Kentucky*, 168 U. S., 488; 18 Sup.
Ct., 199.)"

And, again:

"Having the right to impose such terms as it may see
"fit upon a corporation of this kind as a condition upon
"which it will permit the corporation to do business within
"its borders, the state is not thereafter and perpetually con-
"fined to those conditions which it made at the time that
"a foreign corporation may have availed itself of the right
"given by the state, but it may alter them at its pleasure.
"In all such cases there can be no contract springing from
"a compliance with the terms of the act, and no irrepeal-
"able law, because they are what is termed 'governmental
"subjects,' and hence within the category which permits the
"legislature of a state to legislate upon those subjects from
"time to time, as the public interests may seem to it to
"require.

"As these statutes involve public interests, legislation

" regarding them are necessarily public laws, and as stated
" in *Newton* v. *Commissioners*, 100 U. S., 548, at page 559:
" 'Every succeeding legislature possesses the same jurisdic-
" tion and power with respect to them as its predecessors.
" The latter have the same power of repeal and modification
" which the former had of enactment, neither more nor less.
" All occupy, in this respect, a footing of perfect equality.
" This must necessarily be so in the nature of things. It is
" vital to the public welfare that each one should be able at
" all times to do whatever the varying circumstances and
" present exigencies touching the subject involved may re-
" quire. A different result would be fraught with evil.' "

II.

Passing to the construction of the suicide statute, it may be well to call attention to the use of the words *"committed suicide,"* as they appear in the statute in connection with the subject-matter of insurance. Their plain, ordinary and usual meaning apart from insurance has been fully discussed in the original brief on pages 39 to 42.

By a long line of judicial decisions, previous to the enactment of the suicide statute, the words "commit suicide" had been held to include only the "act of a person in the " possession of his ordinary reasoning faculties," a sane man.

Ins. Co. v. *Terry* (1872), 15 Wall., 580; 21 L. Ed., 236.

Phadenhauer v. *Ins. Co.* (1872), 19 Am. Rep., 623; 7 Heiskell, 567.

Ins. Co. v. *Isett* (1873), 74 Pa. St., 176.

Phillips v. *La. Eq. Life* (1874), 26 La. An., 404.

Pierce v. *Travelers' Ins. Co.* (1874), 34 Wis., 389.

Moore v. *Ins. Co.* (1874), 1 Flipp., 363.

Merritt v. *Ins. Co.* (1875), 55 Ga., 103.

Bigelow v. *Ins. Co.* (1876), 93 U. S., 284.

Life Assoc. v. *Waller* (1876), 57 Ga., 533.

Ins. Co. v. *Rodel* (1877), 95 U. S., 235; 24 L. Ed., 433.

Ins. Co. v. *Groom* (1878), 86 Pa. St., 96; 27 Am. Rep., 689.

Newton v. *Ins. Co.* (1879), 76 N. Y., 426; 32 Am. Rep., 325.

Schiffer v. *Ins. Co.* (1879), 25 Minn., 534.

Whether the words be taken in their "plain, ordinary and usual" sense, or as words of art in their technical legal sense, they are not broad enough to comprehend the death of Jarman, who "took his own life, while insane to such an "extent as to be incapable of understanding the nature or "consequences of his act." Under the stipulation, if the statute "does not operate against" the petitioner, the recovery shall be limited to the sum of $811.83, the amount paid in assessments. (Rec., 6. Eleventh.)

III.

The weight of authority is very strongly in favor of the doctrine that when a member of a mutual benefit association agrees in his contract with such association to be bound by the laws, rules and regulations of the association then existing and by those which may thereafter be properly adopted, he is, by the force of this agreement, bound by all the subsequent amendments to such laws, rules and regulations. The following are part only of the authorities to this effect. Under each case a brief statement of the nature of the change

is made, and a part of the language of the court in regard to the above proposition is quoted:

UNITED STATES SUPREME COURT.

Korn v. *Mut. Assurance Soc.* (1810), 6 Cranch., 192:

The change involved a new classification of membership and a new distribution of funds.

"'We will abide by, observe and adhere to the constitution, "rules and regulations which are already established or "may hereafter be established.' It would be difficult to "find words of more extensive signification than these, or "better calculated to aid, explain and enforce the general "principle that the majority of a corporate body must have "power to bind its individuals."

Mutual Reserve Fund Life Assn. v. *Hamlin* (1891), 139 U. S., 297; 11 Sup. Ct., 614; 35 L. Ed., 167:

The change referred to the time of making and the number of assessments.

The contract provided:

"This certificate shall be subject to all the provisions and "stipulations contained in the constitution and by-laws of "this association, with the amendments thereto."

The court said:

"It is true the insured was informed by the defendant's "constitution, as amended July 11, 1883, *subject to which "the contract of insurance was executed*, that assessments "would regularly be made in February, April, June, August, "October and December, or any such other periods as the "directors might determine."

Supreme Lodge K. of P. v. *Withers* (1900), 177 U. S., 260; 20 Supreme Ct., 611-617; 44 L. Ed., ??:

The change provided that the collecting officer should be the agent of the member.

"In the case under consideration it may be immaterial except as bearing upon the equity of the case that the original clause was introduced into the general laws of the order in January, 1894, eleven years after the first certificate was issued to the assured, and nearly nine years after the certificate was issued upon which suit was brought. There is no evidence that it was ever called to his attention or that he had actual knowledge of it. If he were bound at all it would only be by the stipulations in his original application and by the terms of his certificates that 'he would be bound by the rules and regulations of the order now in force, or that may hereafter be enacted.'"

UNITED STATES CIRCUIT COURT OF APPEALS.

Haydel v. *Mut. Res. Fund Life Assn.* (1900), 104 Fed., 718:

One of the questions involved in this case was whether the board of directors had power to increase the rate of assessments from time to time, under the following authority:

"The board of directors shall have authority to fix and determine the amount of benefits for which certificates of membership will be issued, rates of assessments, admission fees and annual dues, and to adopt such other rules and regulations as they may deem best for the interest of the association; and the contract contained the following provisions:

"The entire contract contained in this certificate and said application, taken together, shall be governed, be subject to and construed only according to the constitution, by-laws and regulations of said association."

On the back of the policy in suit there appeared an assessment rate table, and it was claimed that this fixed the rate of assessments for the policy at all times. But the court held that this was not intended "to divest the board of directors of the power plainly conferred on them by the

"charter of the company to enact such amendments as at "any time might be found necessary to meet its death losses." The court said nothing about the prospective operation of these changes, but applied them to all policies alike. This opinion was handed down by the Circuit Court of Appeals of the Eighth Circuit on November 5, 1900, only a few weeks after the decision in the case now before the Supreme Court. The court further says:

"But it is quite evident, we think, that he (the member) "fully understood and assented to the plan on which the "defendant proposed to conduct its business, namely, that "those who became members must in any event pay the "*actual cost of insurance*, whatever it might be, or retire "from membership; and that the *managing officers reserved* "*to themselves and would exercise the power of making* "*assessments from time to time for such amounts as they* "*deemed necessary to pay accrued and accruing death loss-*"*es, and at the same time maintain an adequate reserve or* "*emergency fund.*"

Lloyd v. *Supreme Lodge K. of P.* (1899), 98 Fed., 66, 70:

The change provided that impairment of health by the use of intoxicating liquor would avoid the certificate, and it appeared that the impairment existed prior to the change.

"The stipulation that the contract 'shall be governed by "all the laws, rules and regulations of the order governing "the rank now in force or that may hereafter be enacted,' "and the condition requiring a full compliance with all "the laws governing this rank now in force or that may "hereafter be enacted, are provisions which frequently ap-"pear in like contracts between mutual benefit associations "and their members. The right so reserved in the associa-"tion is well recognized as authorizing it to subject members "to further requirements and conditions of future liability "by reasonable enactments within the objects and for the "general welfare of the association and to apply the regu-"lations to prior contracts, but to the extent only that the "conditions they impose arise after the enactment."

UNITED STATES CIRCUIT COURT.

Haydel v. *Mut. Res. Fund Life Assn.* (1899), 98 Fed., 200, 204:

This is the same case that was reviewed in the Circuit Court of Appeals, cited above, and in speaking of the contract Judge Adams said:

"The policy itself and the table on the back thereof are "made subject to the constitution, subject to the by-laws "and subject to any amendments that may be from time "to time adopted, and one becoming a member of a mutual "insurance company takes his membership subject to the "provisions of the constitution and by-laws and subject to "such changes as may be made pursuant thereto in the "rates and assessments."

SUPREME COURT OF ALABAMA.

Supreme Commandery v. *Ainsworth* (1884), 71 Ala., 436:

The change provided that suicide, sane or insane, would avoid the certificate.

Speaking of the agreement of the member to abide by future by-laws the court said:

"These are words of large signification and clearly ex- "press that the company consented that the contract should "be subject to future as well as existing by-laws. Parties "may contract in reference to laws of future enactment— "may agree to be bound and affected by them as they would "be bound and affected if such laws were existing. They "may consent that such laws may enter into and form parts "of their contracts, modifying or varying them. It is this "voluntary agreement which relieves the application of "such laws to their contracts and transactions from all im- "putations of injustice."

SUPREME COURT OF CALIFORNIA.

Stahl v. *Society* (1890), 82 Cal., 557; 22 Pac., 1125, 1126:

The change here limited the amount to be received in case of sickness, after the sickness existed and the member had received the amount to which he was limited by the change.

"In view of this power to alter the contract, it can not "be said that the defendant could not alter its by-laws in "any respect. The respondent argues, however, that it "had no power to alter them so as to impair a vested right. "The term 'vested right' is often loosely used. In one sense "every right is vested. If a man has a right at all, it must "be vested in him; otherwise, how could it be a right? The "moment a contract is made, a right is vested in each party "to have it remain unaltered, and to have it performed. The "term, however, is frequently used to designate a right "which has become so fixed that it is not subject to be di-"vested without the consent of the owner, as contradistin-"guished from rights which are subject to be divested with-"out his consent. Now, a right, whether it be of such a fixed "character or not, must be a right to something; and when "a man talks vaguely of his vested right, it conduces to "clearness to ask: 'A vested right to what?' In the pres-"ent case the plaintiff can have no right to have the con-"tract remain unchanged, because, as we have seen, the "contract itself provides that it may be changed. Nor has "he a right to remain unaffected by any change that may "be made; for if such right be common to all the members, "it is merely another way of saying that no change can be "made; and, if the right be not common to the other mem-"bers, it would be to assert a privilege or superiority over "them, of which there is no pretense. If the plaintiff has "any right which is so fixed that it is not subject to change, "we think it can only be to the fruits which ripened before "the change was made; in other words, to such sums as "became due before the new by-law was adopted."

Bowie v. *Grand Lodge* (1893), 99 Cal., 392; 34 Pac., 103:

The amendment changed the amount to be paid, and the method of computing it.

"The alleged change made in the laws of the defendant "did not impair the obligation of plaintiff's contract or af- "fect any vested right of his. The plaintiff when he be- "came a member of the defendant corporation, became also "bound by its constitution and laws, and such constitution "and laws became a part of his contract of membership. This "certificate, when read and construed, as it must be, in con- "nection with the constitution and laws of the defendant ex- "isting at the time of its issuance, and which provided that "a change might be made in the laws of defendant governing "such funds, means that the plaintiff is to participate in "the special benefit fund of defendant in an amount to be "computed according to the laws of defendant in force when "the several coupons shall mature."

(Citing the language quoted above from *Supr. Commandery* v. *Ainsworth*, 71 Ala., 436.)

Lawson v. *Howe* (1897), 50 Pac., 763, 764:

"Individuals who associate themselves in a voluntary "fraternal organization may prescribe conditions upon "which membership in the association may be acquired, or "upon which it may continue, and may also prescribe rules "of conduct for themselves during their membership, with "penalties for their violation, and the tribunal and mode in "which the offenses shall be determined and the penalty "enforced. These rules constitute their agreement, and "unless they contravene some law of the land, are regarded "in the same light as the terms of any other contract."

CONNECTICUT SUPREME COURT.

Massachusetts Mut. Ben. Assn. v. *Severson* (1899), 71 Conn., 719; 43 Atl., 192:

The amendment changed the provisions referring to beneficiaries.

"The terms of the contract between the members imply "a submission to such changes in this matter as the associa- "tion may make. These changes apply to all members "alike and the by-laws in force at the death of the member "determine the disposition of the fund."

ILLINOIS SUPREME COURT.

Supreme Lodge K. of P. v. *Kutscher* (1899), 179 Ill., 340; 53 N. E., 620, 622:

The change provided that self-destruction would avoid the contract.

"By force of his contract he and his beneficiary were "bound by it (a subsequent by-law), although it was adopt- "ed after he became a member and received his certificate."

Supreme Lodge K. of P. v. *Trebbe* (1899), 179 Ill., 348, 355; 53 N. E., 730:

The change was the same as in the last case.

"The power of the society, derived from its charter and "the laws under which it was organized, to enact by-laws, "is continuous, residing in all regular meetings of the so- "ciety as long as it exists. Any meeting could, by a ma- "jority vote, modify or repeal the law of a previous meeting, "and no meeting could bind a subsequent one by irrepealable "acts or rules of procedure."

(Citing *Richardson* v. *Society*, 58 N. H., 188.)

Fullenwider v. *Supr. Coun. Royal League* (1899), 180 Ill., 62; 54 N. E., 485, 486:

The change involved the right to increase the rate of assessment.

"The power to enact by-laws for the government of a "corporate body is an incident to the existence of a body "corporate, and is inherent in it. The power to make such "changes as may be deemed advisable is a continuous one.

"Where the contract contains an express provision reserv-
"ing the right to amend or change by-laws, it can not be
"doubted that the society has the right so to do; and where,
"in a certificate of membership, it is provided that mem-
"bers shall be bound by the rules and regulations now govern-
"ing the council and fund, or that may thereafter be enact-
"ed for such government, and those conditions are assented
"to, and the member accepts the certificate under the con-
"ditions provided therein, it is a sufficient reservation of
"the right in the society to amend or change its by-laws.
"The contract requiring compliance with any by-laws that
"might be thereafter enacted, and the certificate being ac-
"cepted with such a clause therein, there is no vested right
"of having the contract in the certificate remain unchanged,
"because the recognition of the power to make new by-laws
"is necessarily a recognition of the right to repeal or amend
"those theretofore made."

Baldwin v. *Begley* (1900), 56 N. E., 1065, 1068; 185 Ill., 180:

The change affected the designation of beneficiaries.

"A party can not claim the right to have a contract re-
"main unaltered, when the contract itself provides that it
"may be changed."

(Citing the above Illinois cases.)

Covenant Mut. Life Assn. v. *Kentner* (1900), 58 N. E., 966; 188 Ill., 431:

A change was made in the rate of assessment, but there was no agreement of the member to abide by such change.

"If a member agrees that future by-laws or amendments
"shall enter into and form a part of his contract, and modify
"or vary it, he will be bound by such by-laws or amendments
"because they are a part of his contract. In *Fullenwider*
"v. *Supreme Council* the certificate was on the express con-
"dition that the member should comply in the future with
"the laws, rules and regulations that might thereafter be
"enacted by the supreme council to govern said council and

" fund, all of which were made part of the contract. The " insured expressly consented to the conditions, and it was " held that the agreement authorized a change in the rate " of assessments under a by-law which, in the opinion of the " court, was not unreasonable. Even if the certificate states " that the by-laws are a part of the contract, and that they " are subject to amendment, subsequent by-laws will be con- " strued to apply only to contracts made after the adoption " of such by-laws, in the absence of an agreement that they " shall have a retrospective effect. This is upon the prin- " ciple that all laws and by-laws have a prospective, and not " a retrospective, effect, unless the intent that they shall " have a retrospective effect is clear and unmistakable. Un- " less there is an express agreement that a member shall " be bound by future by-laws varying or modifying his con- " tract, he is not so bound."

Moerschbaecher v. *Supr. Council Royal League* (1900), 59 N. E., 17:

The member was a saloon keeper and continued in the business after the adoption of a by-law prohibiting the occupation, but providing that the member should be notified of the forfeiture. A later by-law provided that engaging in the business should be sufficient ground of forfeiture.

"The power and right to pass it (a subsequent by-law) was " reserved when said member was admitted to membership. " and he expressly covenanted to obey and be bound by all " by-laws so adopted."

Peterson v. *Gibson* (1901), 61 N. E., 127, 128:

In this case the contract provided only that the member would be bound by the constitution and by-laws of the association, in which was contained a provision that the said constitution might be amended and changed at the annual meeting of the association, but there was no provision in the contract that the member agreed to abide or be bound by

amendments adopted thereafter. The court in distinguishing this sort of a contract from one in which the member does not agree expressly to be bound by subsequent amendments said:

"It is only when a member in express terms agrees to be "bound by such constitutional amendments or by-laws as "thereafter may be enacted that he is bound by future "amendments or by-laws which *impair the obligation* of his "contract of membership injuriously."

Assn. v. *Kentner*, 188 Ill., 431; 58 N. E., 966.

Baldwin v. *Begley*, 185 Ill., 180; 56 N. E., 1065.

"In the absence of such an express agreement the contract "of membership can not be impaired by subsequent changes "effected by the association."

INDIANA SUPREME COURT.

Supr. Lodge K. P. v. *Knight* (1889), 20 N. E., 480, 485:

In this case the effect of the amendments was that a class of 16,000 members was reduced by the operation of the amendments to about 173 members. The certificate did not promise a fixed amount in any event, but promised only the payment of $1 for each of the members, *not to exceed a certain amount*. The change materially decreased the expectancy. In the case before the court the contract promised to pay a certain proportion of the money received in the death fund from the proceeds of one assessment *not to exceed a certain amount*.

The whole opinion is peculiarly applicable to this case. Among other things the court said:

"Where, as here, there is an express and clear reserva- "tion of the right to amend, the member is bound to take

" notice of the existence and effect of that reserved power. " The power to enact by-laws is inherent in every corpora- " tion as an incident of its existence. This power is a con- " tinuous one. (Nibl. Mut. Ben. Soc., Section 124.) No " one has a right to presume that by-laws will remain un- " changed. Associations and corporations have a right to " change their by-laws when the welfare of the corporation " or association requires it, and it is not forbidden by the " organic law. The power which enacts may alter or repeal. " The duly chosen and authorized representatives of the " members alone are vested with the power of determining " when a change is demanded, and with thir discretion courts " can not interfere. Were it otherwise, courts would control " all benevolent associations, all corporations, and all fra- " ternities. It is only when there is an abuse of discretion, " and a clear, unreasonable and arbitrary invasion of pri- " vate rights, that courts will assume jurisdiction over such " societies or corporations. With questions of policy, doc- " trine or discipline, courts will not interfere. Courts will " compel adherence to the charter and to the purpose for " which the society was organized, but they will not do more. " To justify interference by the courts and warrant the over- " throw of by-laws enacted in the mode prescribed by the by- " laws, it must be shown that there was an abuse of power, " or that the later by-law is unreasonable. It is not enough " to show that a better or wiser course might have been pur- " sued, for it must be shown that there was an abuse of dis- " cretion, or that the by-law is so unreasonable as to be " void. In the case before us the change from the one plan " to the other was not an arbitrary or unreasonable exercise " of power, nor was it a repudiation of a debt, nor the de- " struction of a vested right. It was not unreasonable, be- " cause it may well be that the system of insurance originally " adopted, which gave no heed to age, was so infirm as to be " incapable of long enduring. It was not arbitrary, because " the by-laws reserved the right of amendment, and a desire " to promote the welfare of the society brought about the " change. It was not the repudiation of a debt, because the " right to the avails of assessment provided for by the con- " tract was not taken away. It is to be constantly kept in " mind that the contract *does not bind the society to pay a*

"*designated sum,* absolutely and at all events; but, on the "contrary, the contract, by its express terms, limits the bene- "ficiary to a specific fund derived from assessments. What- "ever the nature of the right, it is only such as the contract "creates, no matter who becomes the party beneficially in- "terested. The contract with its limitations and conditions "is the primary source of the right to recover."

LOUISIANA SUPREME COURT.

Daughtry v. *Supr. Lodge K. of P.* (1896), 48 La. An., ??: 20 So., 712:

The change provided that suicide would avoid the contract.

"Any law enacted in pursuance of this agreement is the "voluntary consent of the members of the order made for "their mutual benefit and by their proper representatives."

Citing *Supr. Com.* v. *Ainsworth*, 71 Ala., 436.

MASSACHUSETTS SUPREME JUDICIAL COURT.

Sargent v. *Supr. Lodge Knights of Honor* (1893), 158 Mass., 557; 33 N. E., 650:

The amendment limited the classes of beneficiaries.

"But that constitution contained a provision to the ef- "fect that it might be amended, and in 1884 it was in fact "amended to conform to a new charter obtained in Missouri "and the payment of the benefit here was limited to the mem- "bers of the holder's family and persons dependent upon "him."

The court held the amendment to be valid and binding.

Pain v. *Societe St. Jean Baptiste* (1899), 172 Mass., 319, 323; 52 N. E., 502, 503:

The change here limited the time during which benefits might be paid, and was made after the illness began.

"There can be no right to future benefits vested in one "member more than in another. The right of a sick mem- "ber to future benefits, which became vested in the plaintiff "at the time of the disability, is not a right to receive, so "long as such disability continues, the future benefits pro- "vided by the by-laws existing at the time the disability be- "gins, but simply a right to receive them subject to such "changes as may be made by the society; and it is no viola- "tion of such a vested right to make the changes at any "time. Such a change is not a repudiation of, but, on the "contrary, is in accordance with the terms of the contract. "As was said in *Smith* v. *Galloway* (1898), 1 Q. B., 71, 77, "'Where the original contract provides for alteration of the "rules, he is bound by any subsequent alteration that is "made, within the power conferred, whatever the extent of "that alteration may be.' Such an interpretation of the "contract seems to be in accordance with the provision for "amendments, and to be the only one reasonably calculated "to subserve the interests of all, and to enable the society to "accomplish the objects for which it was incorporated. We "are aware the doctrine herein enunciated is inconsistent "with some decisions in other states, but we are satisfied "that it is sustained by the better reasoning and the weight "of authority."

(Citing many of the cases herein cited.)

Messer et al. v. *Ancient Order United Workmen* (1902), 62 N. E. (Mass.), 252:

The change referred to a classification of rates according to age, the rate having been level for all ages.

"The plaintiffs contend that their certificates of member- "ship constitute a contract that can not be affected by the "recent legislation, or by changes in by-laws whereby they "are to pay classified rates for death benefits. But these "certificates are silent in regard to the rates to be paid. "They give members all the rights and privileges of mem- "bership, with a right to participate in the beneficiary fund "to the amount of $2,000, to be paid at death. This is on "condition that the member complies 'with all the laws, rules

" and requirements' of the order. The plaintiffs contend that " Pub. St., C. 115, Sec. 8, which authorizes such a corporation to 'provide in its by-laws for the payment by each " member of a fixed sum,' etc., and the subsequent statutes " prior to St. 1898, C. 474, which contains similar language, " look to a kind of insurance upon the level assessment plan, " in which the assessments to be paid by members are all " alike, without reference to their age. They also rely upon " the provision for the payment of a fixed rate in the general laws originally adopted by the corporation. If we assume, without deciding, that this contention is correct, " this mode of making assessments for the future is simply a " detail in the management of the business of the order, " which the lodge might at any time permit to be changed. " The certificate holders are members of a fraternal beneficiary association, which may, from time to time, amend " its by-laws and change its method of doing business as the " members determine for the common good. By the express " terms of the certificates the members are to be bound by " changes in the by-laws that may be made from time to " time. The legislature might change the statutes affecting " such companies, and the companies might in like manner change the by-laws under this power expressly " reserved. The case is fully covered by the decisions in *Pain* v. *Society*, 172 Mass., 319; 52 " N. E., 502; 70 Am. St. Rep., 287, and *Fullerwider* v. *Royal League*, 180 Ill., 621; 54 N. E., " 485; 72 Am. St. Rep., 239. This change in the by-laws is " not void, as an abuse of the power to make changes, on " the ground that it is calculated to defeat the purpose of the " organization and destroy the rights of the members. It may " be conceded that some amendments might be so foreign to " the general scheme and purpose of the organization, and " so contradictory to its fundamental law and the contracts " made under it, as not to be within the power of amendment " referred to. But this is not true of an amendment which " merely changes forms and methods, while the substance of " the general plan and purpose of the organization is preserved. We are of opinion, therefore, that the classified " assessments referred to in the bill are not shown to be unauthorized or illegal."

MICHIGAN SUPREME COURT.

Borgards v. *Farmers' Mut. Ins. Co.* (1890), 79 Mich., 440; 44 N. W., 856, 857:

The change exempted the company from liability for loss resulting from the use of steam power on insured's premises.

"This policy was issued and received upon the express "agreement that it was subject to all changes that should be "thereafter made in the charter and by-laws. Such con- "tract is valid. The defendant was a mutual insurance com- "pany. The plaintiff, as a member, had an equal voice with "the others in the management of its affairs. The by-law "was regularly adopted. Under the charter he could have "had his policy canceled and withdrawn. By his conduct he "assented to the by-law, and the change in the terms of his "policy caused thereby. This is not in conflict with the "principle established in *Becker* v. *Insurance Co.*, 48 Mich., "610; 12 N. W. Rep., 874. In that case there was no agree- "ment in the policy that it should be subject to change. "There the policy was declared to be subject to the charter "and by-laws, which meant, of course, the charter and by- "laws as they then existed."

MISSISSIPPI SUPREME COURT.

Dornes v. *Supr. Lodge K. of P.* (1898), 75 Miss., 466; 23 So., 191:

The change avoided the contract in case of suicide.

"In the very case relied on by learned counsel for appel- "lant (*Hobbs* v. *Association* (Iowa), 47 N. W., at page 984) "it is said: 'But it does not follow that they will be bound "by all those (by-laws) adopted after their contracts of mem- "bership are made. Whether they will be or not will de- "pend upon the terms of their contract. If that provides "that members shall be bound by all articles or by-laws which "may at any time be adopted, we know of no reason why it "is not valid. In such cases changes made are not in vio- "lation of the contract, but are in harmony with it."

MISSOURI SUPREME COURT.

Ellerbe v. *Faust* (1894), 25 S. W., 390:

The change here prohibited the occupation of saloon keeper.

MISSOURI COURT OF APPEALS.

Chadwick v. *Order of Triple Alliance*, 56 Mo. App., 463, 474.

State ex rel Schrempp v. *Grand Lodge*, 70 Mo. App., 456.

Brower v. *Supreme Lodge* (1898) (Kansas City Court of Appeals), 1 Mo. App. Rep., 226.

These Missouri cases will be noticed later.

NEW HAMPSHIRE SUPREME COURT.

Supreme Coun. American Legion of Honor v. *Adams* (1895), 44 Atl., 380, 382:

The amendment referred to the designation of beneficiaries.

"Parties may contract with reference to laws to be enacted in the future, and may agree to be bound by them. They may agree, as in this case, that *such laws may enter into and form a part of their contracts.* It must be incident to the nature and purposes of an association of this character that it should have the power to change its laws as experience and necessity require, and bind its members thereby."

PENNSYLVANIA SUPREME COURT.

Chambers v. *Supreme Tent Knights of Maccabees* (1901), 49 Atl., 784, 785:

The contract originally provided that suicide within one year would avoid it, and the change extended the time to five years.

"It was part of his contract that he would comply with "by-laws thereafter adopted. That by-laws so made are "valid, both as to the member and his beneficiary in cases "exactly like this, has been held by many courts of high "authority. (See 3 Am. & Eng. Enc. Law (2d Ed.), p. "1065; *Supreme Lodge* v. *LaMalta*, 95 Tenn., 157; 31 "S. W., 493; 30 L. R. A., 838; *Supreme Commandery* v. "*Ainsworth*, 71 Ala., 436; 46 Am. Rep., 332; *Supreme* "*Lodge* v. *Kutscher*, 179 Ill., 340; 53 N. E., 620; 70 Am. "St. Rep., 115; *Fullerwider* v. *Supreme Conn.*, 180 Ill., "621; 54 N. E., 485; 72 Am. St. Rep., 239; *Pain* v. *So-* "*ciete St. Jean Baptiste*, 172 Mass., 319; 52 N. E., 502.)"

This case distinguishes the case of *Hale* v. *Equitable Union*, 168 Pa., 377; 31 Atl., 1066, generally cited on the other side of this proposition.

RHODE ISLAND SUPREME COURT.

Supreme Council Catholic Knights v. *Morris*, 16 R. I., 468; 17 Atl., 57, 58:

The change referred to the right to change the beneficiary without such beneficiary's consent.

TENNESSEE SUPREME COURT.

Supreme Lodge K. P. v. *LaMalta* (1895), 95 Tenn., 157; 31 S. W., 493, 495:

The change added the suicide clause to the contract.

"The fact that its enactment was subsequent to the date

"of his certificate is rendered unimportant by the stipula-
"tions in the application and in the certificate itself, whereby
"he bound himself irrevocably to full obedience and sub-
"mission to all legislation then in existence or thereafter
"enacted for the government of the endowment rank, of
"which he was becoming a member."

TEXAS COURT OF CIVIL APPEALS.

West v. *Grand Lodge A. O. U. W.* (1896), 37 S. W., 966, 968:

The change related to the classes of beneficiaries.

"In the application for insurance he covenanted to be
"bound by the by-laws, rules and regulations as they then
"existed, or as they might be altered or changed afterwards.
"The certificate was granted on the same condition. The
"constitution and by-laws, with the changes made therein,
"being contracts by which he was bound, if not against pub-
"lic policy, will be enforced by the courts like other con-
"tracts. When the law was passed providing that the in-
"surance money was to be paid to beneficiaries of certain
"specified classes, to be designated by the member holding
"the certificate, it entered at once into and became a part
"of the contract of insurance. (*Hellenberg* v. *Independent*
"*Order*, 94 N. Y., 580; *Sanger* v. *Rothschild*, 123 N. Y.,
"577; 26 N. E., 3.)"

Writ of error denied by Texas Supreme Court.

Duer v. *Supreme Council, Order of Chosen Friends* (1899), 52 S. W., 109:

Here the change decreased the amount to be paid from $3,000 to $1,500, and all the money paid in assessments.

"Philip C. Duer had actual notice of the enactment of
"the new law by the order. *The assessments were less un-*
"*der the new than the old* plan. The amendment to the
"laws was regularly adopted by the body authorized to do
"so. The husband of appellant was charged with notice of
"the by-laws of the order to which he belonged, and had

"agreed to be bound by them, and appellant had no vested "right in the certificate that could not be affected by the "change of by-laws. (Bac. Ben. Soc., Sec. 91a; *Byrne* v. "*Casey*, 70 Tex., 247; 8 S. W., 38; *West* v. *Grand Lodge* "(Tex. Civ. App.), 37 S. W., 966.)"

VERMONT SUPREME COURT.

Fugure v. *Soc. St. Joseph*, 46 Ver., 369.

SUPREME COURT OF APPEALS OF VIRGINIA.

Mutual Reserve Fund Life Assn. v. *Taylor* (1901), 37 S. E., 854:

This case involved the same question decided by the Circuit Court of Appeals of the Eighth Circuit in the case of *Haydel* v. *Mut. Reserve Fund Life Assn.*, 104 Fed., 718, cited above, namely, the right to increase the rate of assessments pursuant to power reserved for that purpose. The case was decided by the lower court against the association and was reversed by the Supreme Court. It is impossible to quote from the case without making the quotation too long; but the right to make an increase in the number of assessments and in the rate of assessments was upheld in a carefully considered opinion. The court laid particular stress upon the acquiescence of the insured in the changed rate of assessments, evidenced by his continued membership and payment of the increased rates, without objection, and on this point said:

"While it is true that acquiescence in an unlawful de- "mand is not a reason why a person shall continue to ac- "quiesce, yet where the question is whether or not a right "exists, or what construction shall be placed upon an agree- "ment where its terms are not clearly defined, the acquies-

"cence by one party in the other's known construction and "compliance with its demands, is material, and throws much "light on the question at issue."

Wisconsin Supreme Court.

Schmidt v. *Supreme Tent, Knights of Maccabees* (1897), 73 N. W., 22:

Here the change prohibited the occupation of saloon keeping.

"The by-law in question (passed subsequent to issuance "of the certificate) has become a part of the contract."

Hughes v. *Wisconsin Odd Fellows' Mut. Life Assur. Co.* (1898), 73 N. W., 1015, 1018:

The change added a suicide clause to the contract.

"The subsequent by-law relied on by the company to de- "feat a recovery may be fairly said to have been consented "to by the insured. He stipulated, in substance, to be "bound by the action of the corporation at large, or of its "board of directors, in respect to its by-laws, rules and reg- "ulations. This was the effect of his contract, and, so far "from being violative of the provisions of the contract, it "is in accordance therewith, and with the consent of the as- "sured contained in his application."

This case distinguishes the case of Morrison against the same insurance company, 59 Wis., 162; 18 N. W., 13, commonly cited to support the contrary proposition of law.

Loeffler v. *Modern Woodmen of America* (1898), 75 N. W., 1012, 1014:

The change added a prohibited occupation.

It was here contended that the subsequent by-law was inoperative so far as the plaintiff was concerned, as it impaired the obligation of his contract.

"A perfect answer to such contention is that the plaintiff "accepted his benefit certificate in question 'subject to all "the conditions on the back' thereof, and named in its fun-"damental laws, and liable to forfeiture if 'the plaintiff "should not comply with the conditions, laws and such by-"laws and rules as' were then, or might thereafter 'be adopt-"ed by the head camp, or the local camp' of which he was a "member. In holding that the plaintiff, by the express "terms of his contract, is bound by the amendment so "adopted after he became a member, we are simply follow-"ing the rule recently applied by this court to other cases. "(*Schmidt* v. *Knights of Maccabees* (Wis.), 73 N. W., 22; "*Hughes* v. *Insurance Co., Id.*, 1015.)"

ENGLAND, COURT OF QUEEN'S BENCH.

Smith v. *Galloway* (1898), 1 Q. B., 71, 77:

The change here reduced the amount of benefits.

"Where the original contract provides for alteration in "the rules the member is bound by any subsequent altera-"tion that is made, within the power conferred, whatever "the extent of that alteration may be."

There are a number of decisions that amendments do not affect existing contracts, but in most of these the member did not agree to be bound by subsequent amendments.

The following cases cited by counsel are of this class:

Carnes v. *Iowa Traveling Men's Assoc.* (Iowa), 76 N. W., 683.

Hobbs v. *Assn.*, 82 Iowa, 107; 47 N. W., 893.

Seiverts v. *National Ben. Assn.*, 95 Iowa, 710; 64 N. W., 671.

(In all these Iowa cases the court declares that amendments will not affect existing contracts, unless the right to make such amendments binding is reserved.)

Spencer v. *Grand Lodge*, 65 N. Y. Supp., 1146.

Benton v. *Brotherhood*, 146 Ill., 570; 34 N. E., 939.

Moore v. *Chicago Guaranty Fund Life Soc.*, 76 Ill. App., 433; affirmed 52 N. E., 882.

(Here there was no question of a change being made in the by-laws of the association; the change involved was in the Illinois statute governing assessment insurance.)

Voigt v. *Kersten*, 164 Ill., 344; 45 N. E., 543.

(Here, again, the same change in the Illinois statute was involved. The true position of the Supreme Court of Illinois on the question is set forth in *Baldwin* v. *Begley*, 185 Ill., 180; 56 N. E., 1065. In the *Moore* and *Voigt* cases there was a change in the statute of Illinois, which limited the designation of beneficiaries, where before there was no limitation. There was no attempt on the part of the association in either case to adopt the limitation of the new statute. But in the *Baldwin* case the association adopted the limitation prescribed by the later statute, and it was held to be binding on existing contracts.)

Pokrefsky v. *Detroit Firemen's Assn.* (Mich.), 80 N. W., 240.

(There was no agreement to be bound, the member protested against the amendment, and the case was distinguished from *Borgards* v. *Farmers' Mut. Ins. Co.*, 79 Mich., 440; 44 N. W., 856, cited above.)

Hysinger v. *Supreme Lodge*, 42 Mo. App., 635.

It is said that this case is the leading case on this question in Missouri. There was no agreement in this case to "*abide by future by-laws.*" The same is true of the case of *Grand*

Lodge v. *Sater*, 44 Mo. App., 452. These cases are not in point.

In *Chadwick* v. *Order of Triple Alliance*, 56 Mo., 463, 474, the rule is recognized:

"The answer does not in terms state that these provisions "of the constitution and laws were in force when the cer- "tificates sued on were issued, *nor that the certificates were "issued subject to such subsequent changes in the constitu- "tion as the society might make. Unless one or the other "of these conditions existed the certificate was not affected "by subsequent changes in the constitution.*"

In *State ex rel.* v. *Grand Lodge*, 70 Mo. App., 456, 467, in which there was an agreement to abide by subsequent amendments, it is said:

"He agreed in advance that changes in the by-laws might "be made, and unless this change is an unreasonable one, the "respondent's right to membership and to participate in the "benefits of the order thereafter were dependent upon his "observance of the new by-law."

In *Brower* v. *Supreme Lodge*, 74 Mo. App., 490, 496, an agreement to abide by future changes in the by-laws was enforced against a contract issued before the changes were made. The change involved a great reduction in the amount otherwise to be received.

In *Ellerbe* v. *Faust*, 25 S. W., 390; 119 Mo., 653, a by-law was passed after a member had joined the order, providing that no saloon keeper should be or remain a member, and was enforced in the absence of any provision to abide by future changes. It will hardly be contended in the face of these cases that the case of *Hysinger* v. *Supreme Lodge* is the leading case in Missouri on this point.

The case of *Morrison* v. *Wisconsin Odd Fellows*, 59 Wis., 162, is expressly distinguished in *Hughes* v. *Wis. Odd Fellows*, 98 Wis., 298; 73 N. W., 1017, where it is said:

"That case is clearly distinguishable in that in that case "there was no consent, either actual or constructive, on the "part of the insured to the change either of the charter or "by-laws."

The cases which remain to be noticed are those which are cited in the opinion of the Circuit Court of Appeals, 104 Fed., 645, and several cases decided since the writ of certiorari was granted.

In *Wist* v. *Grand Lodge*, 22 Ore., 271; 29 Pac., 610, it was provided that each member should designate as his beneficiary "a member of his family or some one related to him "by blood, or who shall be dependent upon him." Prior to the passage of this by-law the member had appointed a beneficiary who did not come within this description. After stating and recognizing the rule for which we contend, the court found that it would have been impossible for the member in that case to comply with the by-law, as he had no family and no one dependent upon him. It further found that the beneficiary named had an insurable interest as a creditor. It was a case where the fund as a whole must revert to the society or be paid to the designated beneficiary. The decision was placed on the strict ground that any other construction would have been a complete repudiation of the contract.

In the case of *Startling* v. *Supreme Council*, 108 Mich., 140; 66 N. W., 340, there is no provision in regard to compliance with future amendments.

The case of *Smith* v. *Supreme Lodge K. of P.*, 3 Mo. Appeal Rep., 291, is a case in which the amendment of the Endowment Rank of the Knights of Pythias, made in 1896, which provides that if a member commits suicide he forfeits his insurance, or a portion of it, came up for construction.

The same amendment has been upheld and enforced against members who joined before its enactment in the following cases:

Supreme Lodge K. of P. v. *Kutscher*, 179 Ill., 340; 53 N. E., 620.

Supreme Lodge K. of P. v. *Trebbe*, 179 Ill., 348; 53 N. E., 730.

Supreme Lodge K. of P. v. *LaMalfa*, 95 Tenn., 157; 31 S. W., 493.

Daughtry v. *Supreme Lodge K. of P.*, 48 La. An., 1203; 20 Southern, 712.

Dormes v. *Supreme Lodge K. of P.*, 75 Miss., 466; 23 So., 191.

Therefore the opinion of the St. Louis Court of Appeals of Missouri is directly in the face of the supreme courts in the states where the other cases have arisen. Furthermore the opinion of the court seems to have been influenced in some measure by the public policy of Missouri as expressed in the suicide statute, Section 5855. The court bases its opinion principally upon the ground that because the member had paid for eighteen years, during all of which time his beneficiaries might have recovered if he had committed suicide, the subsequent amendment could not be applied to his contract. If this doctrine is correct, all the courts of last resort in all the states where the cases cited have been decided are wholly wrong. It will be admitted, we believe, that the

weight of authority is wholly against the proposition laid down by the Court of Appeals in the *Smith* case.

The case of *Hale* v. *Equitable Aid Union*, 168 Pa., 377; 3 Atl., 1066, has been reviewed and distinguished in the recent case of *Chambers* v. *Supreme Tent* (Pa.), 49 Atlantic, 784, in which the amendment increased the term within which suicide would avoid the contract from one year, as originally provided, to five years.

The court say:

"The defendant's obligation to pay the benefit was conditioned upon the member's compliance with the laws of the order then in force or that might thereafter be adopted. This case is very different from *Hale* v. *Union*, 168 Pa., 371; 31 Atl., 1066. In that case the certificate of membership stipulated that at the expiration of twelve years the member, if living and in good standing, should receive one-half of the amount of his certificate; and while, there, the right to amend the by-laws was reserved to the order, it was held that such specific agreement to pay a certain amount at a certain time was not necessarily a part of the constitution and by-laws. And besides, as I understand that case, the by-laws in question were not changed until after plaintiff's rights had become vested. In the case at bar, had said George F. Chambers died before the amendment to the by-laws, a different case would be presented. Then the case of *Becker* v. *Society*, 144 Pa., 232; 22 Atl., 699, would be in point; for it is there held that, where a society has become liable to a member for sick benefits, it can not avoid such liability by a subsequent amendment of its by-laws. But it is there stated that had such amendment been made before the member was taken sick he would have been bound by it. And said last-named case reaffirms the case of *Society* v. *McVey*, 92 Pa., 510, where it was held that 'a member of an incorporated beneficial society does not stand in the relation of a creditor to the society, and can claim only such benefits as are prescribed by the by-laws existing at the time he applies for relief.'"

A more carefully considered case involving a contract identical with that considered in *Hale* v. *Equitable Aid Union*, *supra*, is that of *Weiler* v. *Equitable Aid Union*, 36 N. Y. Supp., 734; 92 Hun, 277, where the rule is recognized that where the power is reserved to make future amendments they should be applied to the contract, but stating that the change adopted in that case involved a departure from the plan and purposes of the society. As a matter of fact, the original certificate was in the nature of an endowment certificate payable for a certain amount at the expiration of a certain time and no provision appears that the amount to be paid was uncertain or dependent upon the collection of an assessment "not to exceed a designated amount." The change provided that if the member lived to the expectation of life, which any member might fail to do, and was then totally physically disabled, he should receive one-tenth of the amount of his certificate. The court held that the change was a departure from the original purpose of the society and was therefore unreasonable and void.

Here will be noticed the case of *Supreme Council American Legion of Honor* v. *Getz* (C. C. A., 3d Circuit), 112 Fed., 119, in which the only authority cited was the above case, *Hale* v. *Equit. Aid Union*. The *Getz* case was decided December 4, 1901, and the *Chambers* case on July 17, 1901, and yet the Circuit Court of Appeals says that the *Hale* case "is to-day the law as interpreted by its (Pennsylvania's) "court of last resort." The amendment of the by-laws in the *Getz* case was as follows: "Two thousand dollars shall "be the highest amount paid by the order on the death of a "member, on any benefit certificate heretofore or hereafter

"issued." The certificate was for the sum of $5,000. There was absolutely nothing to show that there was any necessity or reason for making this arbitrary reduction of the amount to be paid, the decision resting on the defect in the affidavit of defense, which did not show any assent by the member. (See the same case, 109 Fed., 261, where the facts are more fully set forth.) The member was represented only "by a duly accredited representative" in the body which attempted to make the change, and the trial court held that this was "but to vaguely state conclusions, which the court by being "informed of the facts, should itself have been enabled to "accept or reject."

The case of *Gaul* v. *Supreme Council* (Tenn.), 64 S. W., 1070, involves exactly the same form of contract as the *Getz* case, and contains an exhaustive history of the by-laws relating to payment and the change in question. It is one of the most exhaustive and interesting discussions of the subject to be found in the reports. The court held that the association did not have the power to pass the by-law in question, and that neither the motives which actuated the change, nor its reasonableness, should be considered. The dissenting opinion of Judge Wilson, a member of the Court of Chancery Appeals, quoted at length by the Supreme Court, took practically, though not expressly, the same ground. His language is as follows:

"The reserved right of legislation with respect to its by-"laws, agreed to by the complainant, meant in fact and in "contemplation of law, or ought to be held by the courts to "have meant, in order to preserve any regard for the obli-"gation of the insurance contracts, that it could pass by-"laws, changing the method of doing its business, levying "and collecting premiums or assessments from its insured

"members, and onerating them with additional reasonable "duties or burdens for the preservation of their contracts. "To express the idea in a different form, the reserved right "of legislation was one of preservation, and not one of de- "struction of its contracts."

The *Gaut* case was brought before the courts by a bill filed by Gaut to compel the society to recognize his certificate for $5,000, the original amount; that is, he attacked the legislation at the time when the society sought to enforce it against his contract. After the amendment the society refused to accept assessments for more than $2,000, and he brought an action to compel it to accept assessments for $5,000. If he had quietly acquiesced in the change and paid his assessments on the reduced amount, without objection, as Jarman did for years, would the result have been the same? We think not.

However, accepting the rule as stated above, for the purposes of the discussion, it still remains an open question whether the amendments in the *Jarman* case tended to preserve or to destroy the contracts of members. Only by a painstaking investigation of the financial condition, the gain and loss of membership, the difficulties of explanation entailed by a contract to return "all the money paid in assessments," as well as the face amount of the contract, the amount paid out on account of this feature, and the decrease in the number of assessments made possible by the change, can give the court any adequate idea of whether or not the change did or did not tend to preserve or destroy the contracts of the members. Suggestions touching these points were treated by the trial court in this case as the "re-

finements of an insurance expert," and unworthy of consideration.

The true rule appears to be this: Under the power reserved to make amendments, there is no limitation, except that the amendments shall be made in good faith for the welfare of the association, and for the preservation of its usefulness. It remains to determine what authority shall say finally what amendments come within the above rule, and here we find the established rule that matters of internal discipline and management lie wholly within the power of the association, so long as it confines itself to what is not arbitrary and unreasonable. This is the underlying test of Judge Wilson in the above case. He says that the company can not cut down the money contract obligation, but he gives no reason for this. He separates this element of the contract from all others and says that it shall be inviolable under the power reserved to amend. But by what authority is it thus separated, except the fiat of the court? In effect he says the court will not permit the parties to contract in any manner which will authorize the reduction of the amount to be paid, even though the amount depends upon the contingency of one assessment being sufficient to pay the amount. This is the same ground taken by the Circuit Court of Appeals in the *Jarman* case, and, indeed, the opinion is quoted at length in the *Gaut* case, and no doubt influenced the decision.

Let us take a hypothetical case. Suppose the petitioner company was, at the time of making the first amendment in 1889 (Rec., 26), realizing from one assessment about $4,500. The beneficiary could not recover more than this amount

under the constitution, as it then stood. The amount realized from one assessment remaining the same and the amendment having no effect upon antecedent contracts, what would be the condition after the amendment of 1894? (Rec., 26.) After that time the company was obligated to pay the full amount of the contracts thereafter issued, without regard to the amount realized from one assessment, as before, and whether or not the amendment was applied to existing contracts. The result would have been that every death loss on a new contract would have decreased the amount of money on hand, if any, and more than one assessment must have been made for each death under the new contracts. The old contract, however, would be entitled only to the amount realized from one assessment if it is not affected by the changes. So soon as this condition came to the old members' notice by more frequent calls for assessments, they would drop the insurance as unsafe and inequitable, as it would be. It was to avoid this condition that the change was made and applied; to avoid the necessity of more assessments, the necessity of explaining the apparent incongruity of the contract and, in short, to better preserve the interests of the society and its members. It would be imputing small common sense and an inability to understand their own interests to say that they made the change of 1894, believing it to be operative as to new contracts only. After all, the society itself must determine whether or not the change is to promote its welfare, and if it does not appear so arbitrary or unreasonable as to be void or to be a departure from the objects and purposes of the society, it should be upheld. There is one more condition which should be complied with, which is, that the

change should operate upon all the members equitably, and proportionately. In the *Gaul* case it appears that the change prohibited the payment thereafter of more than $2,000, without respect to whether one had a certificate for $2,000, $3,000, $4,000 or $5,000. The loss of membership, and the financial condition of the society, may have been such that a change was needed to prevent dissolution. In fact such a condition was intimated by the Chancellor. But, the change made should not have cut the $5,000 certificate to $2,000 and left the $2,000 certificate untouched. The cut should have been proportionate, and in this the action was arbitrary and unreasonable. But conceding that it was not open to this objection, which was not noticed by the court, and that if not enforced, the alternative was dissolution or even prospective dissolution, what benefit does the member gain by having his $5,000 certificate recognized? If the power does not remain to pay any certificate or even if a fear that this condition will arise is created, what matters it, whether his certificate be for $5,000 or $2,000? Again, if dissolution is imminent, the court should uphold every reasonable attempt to save something from the wreck, and not bring about dissolution by requiring the impossible, and thus depriving the members of their insurance when, as it says, they may and probably will be unable to secure insurance elsewhere. If the mere fact of becoming unable to carry out the plan proposed constitutes a cause for dissolution it is competent for the state to act, and it is its duty to do so. Thus by pursuing the argument of Judge Wilson to its logical sequence, we perceive that while the contracts may be preserved, the ability to execute them may be lost and they become valueless.

The obvious answer is that the burdens may be increased, and this is true, but this expedient may not bring about the desired result. It fails to take into consideration a tendency common to all insurance organizations, namely, that when there is doubt as to the stability of an institution, the good risks drop out at the first alarm and procure insurance elsewhere, while the impaired risks remain if possible, and the result is that instead of an association of average risks, there is an aggregation of unhealthy men, not insurable elsewhere; the proportionate death rate becomes constantly greater, bringing about dissolution. The signal of alarm is an increase of assessments, no matter how good may be the reason for it. Thus the conditions may be such that an increase of burdens will bring on or intensify the tendency to leave the sinking ship rather than pay an increased rate of passage for the privilege of staying aboard. The unhealthy, the aged, the infirm can not swim and they stay, while the vigorous and the strong leave the sinking craft. But by decreasing the burden to be carried by the association and the benefits to be expected by the members, the association may be held together; it may rehabilitate itself by the acquisition of new blood, and save something. This leads irresistibly to the conclusion that the society is the best judge of its needs and possibilities. There is no advantage to the society in thus cutting down the amount of insurance in force. An increase in insurance in force is the great desideratum of every company and every association, and it is only as a last resort that such an expedient as the reduction of the amount to be paid will be made in any event. I do not wish to be understood as saying that the

amendments made by the petitioner were made as a last resort, but they were made in good faith for the welfare of the association, and for the purpose of avoiding the necessity of an increase in the number of assessments. By referring to "Exhibit E" (Rec., 31) it will be perceived that in 1885 there were but two assessments; in 1889 there were ten assessments; in 1894 there were fifteen assessments, and in 1898 thre were eighteen assessments, a very rapid increase. The cause is apparent. In 1885 the death losses amounted to $3 for each member; in 1889, the amount was $26; in 1894 it was $40, and in 1898 it was $63 for each member. The increase in the number of assessments was made necessary by increased death losses. By column 14 of the same table, it appears that $74,766 were paid out by way of returning to beneficiaries the money paid in assessments, which was equivalent to about eight assessments. The reason for discontinuing the payment of amounts received in assessments is obvious. The increased death rate was increasing the number of assessments rapidly and this increase resulted in holding the membership stationary, as appears in column 2. Since 1898 the Company has lost membership steadily.

The reservation of power to amend a contract avoids the objection that the contemplated amendments are retrospective when they are applied to contracts in existence. This is the very purpose of the reservation. There can be no vested right in the continuance of the contract as it is, in view of such a reservation. The amendment would necessarily and at once affect all future transactions, without regard to the reserved power. Since the *Dartmouth College* case the

courts have held that a charter given by the sovereign amounts to a contract within the meaning of the Federal constitution. But this doctrine led the several states very generally to insert in every special charter, and almost universally in general incorporation laws, a clause reserving the right to "alter, amend or repeal" the charter or the general law. When in such contingency it is claimed that rights are vested under the charters as originally granted, whether under special or general laws, and that the later legislation impairs the obligation of the contracts or is retrospective, the courts hold that it is not obnoxious to either objection.

Matter of Lee's Bank, 21 N. Y., 9, 15.

Matter of Reciprocity Bank, 22 N. Y., 9, 14.

Hamilton Gas Light & Coke Co. v. *City of Hamilton*, 146 U. S., 258; 13 Sup. Ct., 90.

Charlotte, C. A. R. Co. v. *Gibbes*, 27 S. C., 385; 4 S. E., 49.

In the first case cited, a banking association formed under the New York banking law of 1838, had provided in its articles of association that the shareholders should not be personally liable for any contract or debt of the association; the general banking law reserved the right to alter or repeal it, as the legislature saw fit. In 1849 an amendment was enacted which made shareholders personally responsible for the debts contracted by the corporation, after January 1, 1850. After this date debts were contracted in a large sum, and an action was brought by the receiver of the bank to enforce the stockholders' liability created by the Act of 1849. The principal contention of the stockholders was that this legislation impaired the obligation of their contracts as stock-

holders, because, controlling only a minority of the stock, they were unable to prevent the action of the bank in the issuance of bank notes, that the action taken was without their consent, "implicated its stockholders in a liability which they had not consented to assume, and which, on the contrary, they had declared they would not incur." Judge DENIO disposed of their contention in the following apt language:

"But they had voluntarily consented to become stock-
"holders upon the conditions held out by the general bank-
"ing law. One of these conditions was that the legislature
"might amend and alter the act, and in that way change and
"modify the constitution of the corporation. A change
"under this reservation to alter might render their invest-
"ment more or less profitable and their condition more or
"less hazardous. Whatever peril it entailed they consented
"to assume. Stockholders can not put in the plea *non*
"*hace in fœdera veni;* for, although they have not by a
"direct act become parties to the contracts of the association,
"they have conferred powers upon others to contract, to a
"limited extent, in their behalf. In the first place they have
"empowered the corporation to affect their individual in-
"terests to the extent of the corporate authority, and
"then have agreed that the corporate power may be changed
"by the legislature. That change might operate by way of
"restriction or extension. In fact it was materially en-
"larged. Originally the acts of the corporation could only
"affect the shareholders to the amount of their contribu-
"tions to the capital stock, but by the enlargement of its
"powers it was enabled to make contracts which might call
"for a further contribution of an equal amount. The super-
"added liability is as clearly within their contract as that
"incurred in the first instance; for it has been incurred,
"according to the terms of an arrangement to which they
"were parties. In the two cases referred to from Kernan's
"Reports the defendants insisted that they had never con-
"tracted to embark their money in the enterprises which
"were being actually prosecuted by the directors; but the

"answer which this court gave was that they had volun-
"tarily embarked their credit in corporations, whose powers
"were liable to be enlarged by the legislature."

This court is committed to the same doctrine. In the *Hamilton Gas Light* case, above cited, the Constitution of Ohio was shown to contain a provision that "no special "privileges or immunities shall ever be granted, that may "not be altered, revoked or repealed by the general as-"sembly," and that "corporations may be formed under gen-"eral laws, but all such laws may from time to time be al-"tered or repealed." Under an ordinance purporting to grant the "exclusive privilege of laying pipes," etc., the appellant claimed that a subsequent statute enabling the city to build a gas plant for itself or purchase any such plant then in existence was an impairment of its contract with the city. Discussing the claim Mr. Justice HARLAN said:

"This conclusion is required by other considerations. By "the constitution of Ohio, adopted in 1851, it was declared "that 'no special privileges or immunities shall ever be "granted, that may not be altered, revoked or repealed by "the general assembly'; that 'the general assembly shall pass "no special act conferring corporate powers' and that 'cor-"porations may be formed under general laws, but all such "laws may, from time to time, be altered or repealed.' "Const. Ohio, Sec. 2, Art. 1; Sections 1, 2, Art. 13. If "the statute under which the plaintiff became incorporated "be construed as giving it the exclusive privilege, so long as "it met the requirements of law, of supplying gaslight to "the City of Hamilton and its inhabitants by means of "pipes laid in the public ways, there is no escape from the "conclusion that such a grant, as respects, at least, its ex-"clusive character, was subject to the power of the legis-"lature, reserved by the state constitution, of altering or "revoking it. This reservation of power to alter or revoke "a grant of special privileges necessarily became a part

"of the charter of every corporation formed under the gen-
"eral statute providing for the formation of corporations.
"A legislative grant to a corporation, of special privileges,
"if not forbidden by the constitution, may be a contract;
"but where one of the conditions of the grant
"is that the legislature may alter or revoke it,
"a law altering or revoking, or which has the
"effect to alter or revoke, the exclusive character of such
"privileges, can not be regarded as one impairing the ob-
"ligation of the contract, whatever may be the motive of the
"legislature, or however harshly such legislation may oper-
"ate, in the particular case, upon the corporation or parties
"affected by it. The corporation, by accepting the grant
"subject to the legislative power so reserved by the consti-
"tution, must be held to have assented to such reservation.
"* * * All this may be done at the pleasure of the
"legislature. That body need give no reason for its action
"in the matter. The validity of such action does not de-
"pend on the necessity for it, or on the soundness of the
"reasons which prompted it. The words 'at the pleasure
"of the legislature' are not in the clauses of the constitution
"of Ohio, or in the statutes to which we have referred. But
"the general reservation of the power to alter, revoke or
"repeal a grant of special privileges necessarily implies that
"the power may be exerted at the pleasure of the legis-
"lature."

In the *Charlotte, C. & A. R. Co.* case, above cited, the subsequent amendment imposed upon the appellant a tax to support the office of railroad commissioner; after deciding that the legislature had the power to amend the charter of the company, the court inquired whether or not the act in question went beyond the power reserved, to alter, amend or repeal any corporation charter. The court held, in substance, "that the act was a part of the charter, inasmuch as
"the charter was granted and accepted after the passage of
"the act. If, then, the legislature could incorporate into
"the charter the provisions of the act imposing the liability

"complained of at the beginning, without violating the sec-
"tions of the constitution relied on here as to taxation, etc.,
"why could it not do so after the organization of the com-
"pany as well?—the reservation of power to amend, etc.,
"having prevented the vesting of right, beyond the reach
"of such amendment. The ground upon which we held
"that this could be done in the *Greenville & Columbia* case,
"4 Rich., 89, was the consent of the company, thereby waiv-
"ing all objection, constitutional or otherwise. So, here,
"the appellant contracted to take its existence under an
"unlimited power in the legislature to alter, amend and re-
"peal, and it is too late now to complain. *Consensus facit*
"*jus*. It may be said, however, that this consent was given
"under the protection of the constitutional provisions in-
"voked, and therefore it was never understood or agreed
"that these guaranties of the constitution, as to the rights
"mentioned, should be violated, but that this reserved
"power of amendment referred to the ordinary amendments,
"etc., such as would not affect the substantial rights con-
"ferred. The power reserved is very broad, according to
"the terms of the act. It covers the whole subject, 'amend-
"ment, alteration and repeal,' and there certainly is no
"limitation in the language used. Nor do we know where
"to fix the boundary, except it should not go beyond the
"ends to be accomplished or intended to be subserved by
"the reservation, which no doubt was regulation, control
"and supervision, to the end that public interests might be
"protected, as well as that of the corporations. We do not
"see that the act in question transcends this boundary. On
"the contrary, it seems to be within it."

It appears from these cases that persons may contract with the state in such a way that the state may thereafter alter, modify or repeal the contract, *notwithstanding* the provisions of the Federal constitution that no state may by legislation impair the obligation of a contract, and that the language of the reservation will be construed liberally to accomplish the purpose intended; that legislative enactments refer to existing contracts from their enactment because of the agreement of the parties.

Is it not fairly within the freedom of contract, then, for men, who are becoming members of a mutual association for insurance purposes, to agree that their contracts shall be subject to every amendment to the constitution, upon the terms of which, all the rights and relations of all the members depend, when there is *no* provision in the organic law of the association which prevents a subsequent amendment from impairing the obligation of the contract, or what would be its obligation, if unchanged, and on the other hand there is a provision for its amendment, if necessary. The provisions of the Federal and State constitutions do not prohibit any private corporation from changing its contracts with its stockholders and this is done daily, and the only claim that such legislation by a corporation is obnoxious to the above principle is that the policy of the law is against such a change, because the organic law prohibits states from impairing contracts. The true inquiry would appear to be whether or not the individual has entered into a contract so improvident that the courts will not permit it to be enforced, but on more careful consideration, it appears that

all are in exactly the same position and are equally affected by the change, and for this reason, courts will not interfere.

The Circuit Court of Appeals has based its opinion on this branch of the case on two propositions, namely, that because the amendments do not appear to be retrospective, they are prospective, and that even though the association has the power to amend and the amendments were intended to apply to all contracts, the court will place a limitation upon the words of the agreement and determine what the court considers a "reasonable interpretation" of the language in question. It needs no demonstration to show that all amendments were intended to apply to all contracts, for any other intention would make the words used, "I agree to abide by all constitutional amendments" insensible and meaningless. Equality and similarity of position and relations are made possible by this provision and make for the stability of the institution. In view of similar provisions, the courts and counsel in the cases first above cited did not even raise the question. The Circuit Court of Appeals, perceiving no doubt the weakness of this position, placed its main reliance upon the other proposition; and we beg leave to say that this branch of the case was very inadequately considered and that the court even fell into error about statements of fact. First, there is absolutely no limitation upon the words used in the application, "I further agree to abide by the constitution, rules and regulations of the company as they now are, or may be constitutionally changed hereafter." This Court has characterized the same words in *Korn* v. *Mut. Assurance Society*, 6 Cranch, 192, by saying: "It "would be difficult to find words of more extensive signifi-

"cation than these, or better calculated to aid, explain and "enforce the general principle that the majority of a cor- "porate body must have power to bind its individuals." What necessity then arises to enforce a "reasonable interpretation" of the words, and not their plain meaning? By what process of reasoning does the court arrive at the conclusion that it is not reasonable to presume that "the appli- "cant intended to assent in advance to any changes in its "constitution and by-laws which the company saw fit to "make, even if they reduced the amount of indemnity "which the company had promised to pay in this event and "thereby lessened the value of his policy." Granting for the moment that all that is erroneously assumed in this sentence is true, it will be seen that the court does not attempt to show that the words used justified any such limitation of meaning. It is submitted that the province of the court is limited to interpretation of the words used, and is transcended when it assumes to limit the plain meaning of words used without limitation. The court proceeds to say that the member, when he agrees to abide by the constitution, as it is, or may be changed hereafter, means that he will abide by *some* of the amendments, those concerning the government of the corporation, or its mode of transacting its business, or its rules of discipline, for instance; but does not agree to abide by any amendment, which impairs any of the essential provisions of his contract. There is no such limitation in the language used. Such an interpretation amounts to saying that if an amendment seemed to any particular member to be for his advantage, he would be bound, but if he or his beneficiary thought it was not for his ad-

vantage as against all other members, they would repudiate it. But even if there were language which justified such an interpretation, what is the dividing line between what is essential and what is not? In the cases cited, the courts have found the following provisions to be non-essential, according to this test: a new classification of members; an increased number of assessments; increased rates of assessment; the suicide clause; reduction of the amount payable in case of sickness and of death; change in classes of beneficiaries; the addition of certain prohibited occupations; an extension of the period within which suicide would avoid the contract. Many of these changes resulted in certain contingencies in the entire forfeiture and termination of the contract. It is plain that the court desired to and did depart from the weight of authority in this matter, and did so entirely on the ground that it would be unreasonable to presume that a change in the maximum amount to be paid in case of death was within the contemplation of the parties. But just here the Circuit Court of Appeals erred as to the contents of the record and the purport of the certificate as it was issued. The court asserts that "the record contains no evidence that "the deceased member voted for any of the amendments "now in question or was aware of their adoption during "his lifetime." It is agreed that the amendments were made in accordance with the provisions of the constitution (Record 5, "Fifth"), which provided that "all proposed "amendments shall first be submitted in writing to the "board of directors, and if five directors approve the said "amendments, then the board shall require a notice of the

"proposed change to be given to all the members of the "company at least thirty (30) days before the time of said meeting." (Record 19, Article 8, Section 3). Mr. Jarman was then notified and had the opportunity to vote and it is immaterial whether he voted or not. He was bound to know what action was taken on the proposed amendments, of which he had notice and an opportunity to vote, at the meetings of the company.

The provisions of the certificate were that the company would in case of death pay $5,000, and all the money paid in assessments, subject to the limitation as to the amount of such payment as is provided in Section one (1) of Article 7 of the constitution. (Record, 13, Exhibit B.) This section (Record, 18) provides that a $5,000 certificate "shall "be good for all the money in the death fund arising from "one assessment; provided, it shall not exceed $5,000 and "all the money paid on the policy in assessments." When this policy was issued in 1885, an assessment did not produce $5,000; as a matter of fact the only loss paid in that year amounted to $441. Afterwards the membership increased sufficiently to make one assessment amount to more than $5,000, but there was absolutely no guaranty that this condition would be permanent. The contract contained as one of its stipulations the agreement to abide by all changes in the constitution. In 1889 (Record, 26), the above proviso was changed to read, "provided, it shall not exceed "$5,000 and all the money paid on the policy in assess- "ments for the first five years." This was the very section of the constitution which provided for payment. It did not provide for a fixed payment. The members at this time

all held certificates exactly alike. The change affected all or none of them. No vested right could accrue until the death of the member. Accepting here, for the purposes of this argument, the opinion of the Circuit Court of Appeals that the change must operate prospectively and not retrospectively, what will be the result? The company was organized in May, 1884. The amendment was made in January, 1889, before five years had elapsed. No one had then received more than the first five years' assessments and if the amendment were made to operate prospectively on each of the contracts then in existence, everyone would be treated as well as another. Even if so applied, it could not be called retrospective in its operation. It limited the amount which *might* be paid in the future, if one assessment produced more than $5,000. If one member had a vested right which could not be disturbed by the requisite three-fourths vote, so had every other member, but we contend that on the contrary, every member agreed to be bound by the action of the requisite number, and contemplated any change which the required number might think to be good for the welfare of the company.

The change of 1894 (Record, 26), repealed entirely the proviso in Section 1, of Article 7, recited in part above, and left the section as follows: "Upon due notice and satis- "factory proof of the death of a member of this company, "the board of directors shall, within sixty days, pay * * "* the amount set forth in the deceased member's policy "of membership."

Was this amendment applicable or not to existing contracts? If it was applicable, the constitution thereafter

provided, that the amount to be paid no longer depended upon the amount realized from one assessment. But in the language of the court, there is nothing in the record to show that the amendments were intended to operate retrospectively; what then was the result? The new members' death benefits did not depend upon the amount realized from one assessment. The old members' benefits remained contingent in amount upon the amount realized from one assessment. The rate of assessment has always remained the same, and the sufficiency of an assessment to pay a loss of $5,000 therefore depends upon the number of members. If after the amendment of 1894, owing to decreased membership, one assessment did not amount to $5,000, the old certificates which were not affected by the change would not produce their face amount, let alone any money paid in assessments. The shoe would then be on the other foot. The illustration brings into strong relief the inequalities which may result from permitting members, all paying on one basis, to be divided into classes by applying changes to new members and not to existing contracts. To avoid these inequalities, and to retain all the members on one plane of equality at any given time, the right to make the changes applicable to all certificates existing was made; the very fact of making the reservation of power is evidence of the intention to apply the changes to all contracts.

The application of the change of 1889 made by the company thereafter limited the amount payable to $5,000 and all money paid in assessments during the first five years; as less money had to be paid out, less money was required, and the number of assessments which would have been oth-

erwise necessary, decreased; and this in turn encouraged members to keep their certificates in good standing. The amendment of 1894, if applied to existing contracts, amounted to a guaranty that thereafter the amount payable would not depend upon the amount realized from one assessment. This was a long step in advance. There was still left the power to increase the number of assessments without amendment, depending only upon the number of deaths occurring, or to make changes considered necessary by the members collectively, whatever they might be. Up to this time every one was treated exactly alike. Every beneficiary holding a $5,000 certificate received the amount realized from one assessment not to exceed $5,000 and all the money paid in assessments for the first five years, and certificates for smaller amounts were paid in like proportion. From this time, every beneficiary of a $5,000 certificate was entitled to receive $5,000 and all the money paid in assessments during the first five years, subject to the right of amendment.

In 1896 (Record, 27), the last amendment was made by repealing Article VII, Section 4, which authorized the endorsement of the amount paid during five years on the policy and required its payment to the beneficiary. It is admitted that all then members had been contributing their share to pay to beneficiaries of deceased members the face value of certificates and all the money paid during the first five years, and that the application of the 1896 amendment to their contracts placed them in a different position with a different expectancy from that time. But it acted upon all alike, and if they desired to make the change, they had the

power. The whole argument against the application of these amendments rests upon the erroneous assumption that the interest of the member is antagonistic to the interest of the company, which is only another name for all the members. The assumption is erroneous because all are in the same position. No one knows when he is to die, and when a change is made, if all are affected, no one is injured. The chances of life and death may bring the change home to one before another; what may be considered the loss of a few will be the gain of the many, but every one takes the same chance. Furthermore, it should be observed that the member has no reserve under this plan of insurance. The amount collected is simply the cost of death losses and expenses, the balance being returned to the member in the form of a bond, available at once to pay assessments. During thirteen years' membership, Jarman paid only $811.63 for $5,000 of insurance and most of the time, more than $5,000; an average of $12.50 per annum for each $1,000 of insurance. The application of this last amendment again reduced the amount necessary for death losses, and decreased the number of assessments. If, after 1896, he no longer had the small amount of $192 of insurance, this being the amount paid in during the first five years, and he was no longer required to pay for it, what complaint had he to make, and if he might have complained when the change was applied, or at any time during his life, what right has his beneficiary to complain? Others were treated in exactly the same way.

One of the arguments advanced on the other side is that if the company has power to reduce the amount payable by

so much, what is to prevent it from reducing it one-half and finally to one dollar or one cent: there is nothing to prevent, if the power is absolute, as in this case, and the members collectively choose to exercise it. It might be equivalent to a decision to go into voluntary liquidation and in such case the funds on hand, if any, must be distributed. It is just as though ten men who have entered into a pool to pay the widow of each, upon his death, $1,000, come together and decide that they will stop contributions and divide the funds on hand. The man who enters into an assessment company, reserving unto its members collectively the power to change the relations of all its members to itself, takes up the relation with this in view, and he must abide the consequences which follow the common action. The evil, if there be one, will be corrected by enforcement of the contracts as they are made. As long as the plan lasts by which one does not know in advance how much he is to pay for a fixed amount of insurance, or on the contrary, how much insurance he is to receive for a fixed payment from time to time, and he goes into a company with others on these conditions, the right to readjust either the amount of the insurance or the amount of the payment should be preserved. This is the whole of assessment insurance in a nutshell. Its name and plan indicate that it is based, not upon the present ascertainment from past experience of the amount which shall be paid for a given amount of insurance, but upon the indefinite amount made necessary by the future experience of the particular association or society.

However, there are considerations which will deter the members from making any changes, if possible, either by

way of increasing the amount of assessments to be paid, or by decreasing the amount of insurance to be paid, and the greatest of these is self-interest, from which springs the desire to get something for nothing, or as little as maybe, and to retain that which they have.

Standing over against this is the inexorable law of life and death. If insurance is to be maintained, the indemnity must be paid and those who expect to receive must pay the representatives of those who die. Deaths occur more frequently in any group of insured men, as time goes on. In the petitioner company, the number of assessments and death rate per thousand members in each year have been as follows: (Record, 31.)

Year.	Number of Assessments.	Death rate per 1000 Members.
1885	2	.99
1886	8	5.99
1887	10	6.03
1888	10	5.13
1889	11	7.51
1890	11	8.25
1891	12	9.22
1892	15	10.77
1893	15	11.72
1894	15	10.65
1895	15	11.98
1896	16	10.57
1897	16	13.63
1898	18	15.85

This is equivalent to saying that the cost of insurance increases with the age of the company, where the cost depends directly upon the number of deaths. It is apparent that the cost in this company has increased rapidly, and yet the average cost, as seen above, is remarkably low. But human

nature is peculiar. If one gets something very cheap for awhile he begins very soon to feel that he has a vested right to have the market price remain the same. The increasing cost from time to time created dissatisfaction and it became desirable to cut off that which increased the cost, without being appreciated by the members. The proposal to do this was welcomed and adopted. From the standpoint of those interested to keep up the company, it would have served the purpose as well to make a special charge from that time for the amounts then accrued on each policy and to issue no new contracts containing the clause in controversy. This was not done. Such an increase of cost on these members would have led to greater dissatisfaction among them, and as they, and not future members had the power, they acted as to them seemed best. But the function of the court is not to say whether some other course would have been wiser; it is to enforce the contract as it was made by the parties.

We beg leave to repeat that which was said in the original brief. In such a case as this which affects not alone Jarman's beneficiary, but affects every member and every member's beneficiary, the decision should be controlled by considerations of justice and equity for all and not for Jarman's beneficiary alone. The perpetuity of the society means much to these members and to their beneficiaries, because a large percentage of those holding contracts calling for the payment, as the Circuit Court of Appeals says, of all the money paid in assessments are now uninsurable risks, both on account of age and their condition of health.

Should the essential power supposed to reside in the society to meet new contingencies and emergencies by

changes in the particulars indicated applicable to outstanding risks, be denied by this court; and if as a consequence this company should be unable to adapt its methods to the necessities imposed by changed conditions and should be compelled to liquidate, this large class of policy holders who could not go elsewhere, and their beneficiaries, would be the chief sufferers; and their rights and interests must not be overlooked by the court in the consideration of this subject.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1901.

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, *Petitioner*,

vs.

ROSA B. JARMAN, *Respondent.*

Certiorari to United States Circuit Court of Appeals, Eighth Circuit.

ARGUMENT FOR PETITIONER.

It is not intended in this brief to elaborate the arguments already submitted on behalf of the petitioner; but to make a few suggestions to reinforce the considerations urged when the petition was filed.

The following provision is found in the Revised Statutes of Missouri for 1879, as section 5982, afterward 5855; revised statutes of 1889:

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the case that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

The policy in suit was written October 24, 1885, while this statute was in force. In 1887 the legislature of Missouri passed an act for the incorporation and regulation of assessment insurance companies, including in its provisions the regulation of companies incorporated in other States. Section 10 of that act, appears as section 5869 of the revised statutes of 1889, as follows:

"Statement of affairs to be made: Every corporation doing business under this article shall annually, on or before the first day of February, return to the superintendent of the insurance department, in such manner and form as he shall prescribe, a statement of its affairs for the year ending on the preceding 31st day of December, and the said superintendent, in person or by deputy, shall have the power of visitation of and examination into the affairs of any such corporation which (are) conferred upon him in the case of life insurance companies by the laws of this State; and all such foreign companies are hereby declared to be subject to and required to conform to the provisions of section 5912 of the Revised Statutes of Missouri, 1889; provided always that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth. (Laws, 1887, p. 199.)"

The petitioner in this case was an assessment insurance company organized under the laws of Illinois.

Section 5912 of the Revised Statutes of Missouri of 1889, originally adopted in 1885, referred only to the method of obtaining service on foreign insurance companies doing business in that State. The effect of the act of 1887, therefore, was to exempt assessment insurance companies from the operation of the so-called "Suicide Statute," on which the respondent relies in this case; and so the Supreme Court of Missouri holds in *Hayner* v. *Indemnity Co.*, 139 Mo. 410. In that case, however, the policy in suit was written after the adoption of the act of 1887.

The court below held that this act could not be construed to affect the rights of the parties to this case, because the suicide statute must be regarded as worked into the contract and as determining its meaning, scope and effect; and that it was not, therefore, within legislative competence to declare in 1887, in respect of policies theretofore written, that self-destruction might be pleaded as a defense, even where the policy so provided, because a legislative enactment to that effect would impair the obligation of the policy.

The court seemed to assume that if the legislature possessed this power the statute should be given the effect contended for by the petitioner; but the learned counsel for the respondent now insists that in the first place, the statute of 1879 was not repealed, and, second, that the position of the petitioner involves giving to the statute of 1887 a retroactive effect contrary to the constitution of Missouri.

It is true that this section of the statute was not repealed and it still remains in force as to insurance companies other than assessment companies. Assessment companies, however, and their policies were clearly exempted from the effect of this statute. As to such companies it was repealed. If the statute had been in express terms repealed, precisely the same argument would be made on behalf of the respondent that is now submitted. As that statute refers to suits upon policies of insurance on life hereafter issued, it would have been contended that its repeal simply relieved insurance companies from its inhibitions as to policies written after the repeal; and that to construe the repealing statute otherwise would be to give it a retrospective character.

I think it is plain that it is sufficiently accurate to say that

so far as this company or other similar companies are concerned that statute was repealed by the act of 1887. That is to say that they are relieved from its prohibitions and exempted from its operation and as to them it had no longer any existence. I think it is obvious also from the case in Tennessee, *Shields* v. *Clifton Hill Land Co.*, 94 Tenn. 123, cited in the brief filed with the petition, that a statute is not to be regarded as retrospective unless it is of such a character that it impairs the obligation of a contract or divests or impairs vested rights. Now in this case it can not be contended that the parties in entering into this contract of insurance contemplated that the insured would take his own life. For many years after the repeal of the suicide statute the insured continued to pay his premiums on this policy. He took his life on the 12th of September, 1898. From the time that the policy was written until the time of his death this provision exempting the company from liability in the event of self-destruction remained dormant. There was nothing for it to act upon until the contingency contemplated occurred; so there was nothing for the statute of 1879 to act upon until a suit was brought and the defense of self-destruction was interposed. Now when death occurred and when the suit was brought there was no statutory inhibition against the assertion of such a defense, if warranted by the language of the policy. I call particular attention to the language of this prohibitive statute:

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide," etc.

This statute refers to suits brought after the statute went into effect. It can not operate upon suits brought before the

statute went into effect; nor, of course, upon policies written before the statute was adopted; nor, giving the repealing act strictly a prospective operation, can the statute repealed, have any application to suits brought after its repeal. The statute was, in substance, a legislative declaration that a certain defense in suits thereafter commenced should not be permitted in a certain class of cases. It is true that the section concludes with the statement that any stipulation in the policy to the contrary is void.

"All that can be meant by the term, according to any legal usage, is that a court of law will not lend its aid to enforce the performance of a contract which appears to have been entered into by both the contracting parties for the express purpose of carrying into effect that which is prohibited by the law of the land." (*Ewell* v. *Daggs.*)

That is the language of this court, as already quoted in the brief filed with the petition. There was nothing essentially immoral or contrary to public policy in the contract entered into between the insured and the insurance company. There is no reason whatever why the defense sought to be secured to the company in the contingency of self-destruction should not be interposed, except the positive prohibition of the statute. To say that when this statute was thus repealed as to insurance companies of this character, it no longer could operate to prevent such a defense, is not to give the repealing act a retrospective application or construction in any sense, but to apply it prospectively.

Now, I am well aware that many courts and judges have said, over and over again, that the law of a jurisdiction where a contract is made, in force at the time it is made, enters into and

becomes a part of it. I am not unmindful of the fact that Mr. Justice Swayne, speaking for this court in the case of *Walker* v. *Whitehead*, 16 Wall. 314, declared, *ex cathedra:*

"These propositions may be considered consequent axioms in our jurisprudence. The laws which exist at the time and place of the making of a contract and where it is to be performed enter into and form a part of it. This embraces alike those which affect its validity, construction, discharge and enforcement."

But with great deference, I venture to say that nothing can be more untenable than the statement that laws which affect the validity of a contract can in any just sense be said to be a part of or written into such a contract. Such statutes act externally and from without; they are no part of a contract. If they were they would be subject to modification by other parts of the same contract; to qualification, to limitation and to entire abrogation.

This court has recently had under consideration section 130 of the Criminal Code of Illinois. This is a penal statute directed against gambling in grain, stocks, etc., and concludes with the declaration that all contracts made in violation of that section shall be considered gambling contracts, and shall be void. It can not be said with any propriety, nor with any vestige of truth, that this statute is any part of a contract made in violation of its express terms. The statute absolutely destroys and nullifies such a contract. It is no more a part of it than a decree of a court of competent jurisdiction declaring a contract void for fraud, and annulling it, would be a part of that contract. Inaccurate expressions upon this subject have done very much to confuse the law. It is true in some instances the law is regarded as attaching terms, not ex-

pressed, to contracts. For instance, section 45 of chapter 98 of the statutes of Illinois, as it stood some years ago, provided that promissory notes should be entitled to days of grace. A note payable thirty days after date was, therefore, due, with grace added, thirty-three days after date. This was so because there being no expression to the contrary, the law presumed that the parties contracted with a view to this statutory provision and, by reasonable implication, a stipulation for days of grace was imported into the contract; but if the party making the note distinctly stipulated that it should be payable without grace, then there was no such implication; it was excluded by the express language of the contract and the law would then give effect to the stipulations of the parties. Nothing of the kind is possible with statutes affecting the validity of contracts; and if the learned counsel for the respondent will study attentively one of the cases which they cite, they will see that this court clearly recognizes this distinction. In the case of *Equitable, etc., Society* v. *Pettus, Administrator*, 140 U. S. 226, where the insurance company attempted by an express stipulation in the policy to evade a statute of Missouri, declaring an insurance policy after payment of two annual premiums to be non-forfeitable and subject to certain rules of commutation, this court held that this was inadmissible and said:

"The manifest object of this statute, as of many statutes regulating the form of policies of insurance on life or against fire, is to prevent insurance companies from inserting in their policies conditions of forfeiture or restrictions, except so far as the statute permits. The statute is not directory only or subject to be set aside by the company with the consent of the insured, but it is mandatory and controls the nature and terms of the contract into which the company may induce the assured to enter."

This language is in part quoted by counsel; and I should think it would be quite apparent that this was very far from saying that the statute became a part of the contract. The language of Mr. Justice Gray was that "it controls the nature and terms of the contract"; and again it is said:

"It follows that the insertion in a policy of a provision for a different rule of commutation from that prescribed by the statute in case of default in payment of premium after three premiums have been paid, as well as the insertion in the application of a clause by which the beneficiary purports to waive and relinquish all right or claim to any other surrender value than that so provided, whether required by a statute of any State or not, is an ineffectual attempt to evade and nullify the clear words of the statute."

If a statute of this character is to be regarded only as a part of the policy, nothing is plainer than that by such explicit language as was employed in the case referred to its effect could have been entirely abrogated.

But a statute affecting and regulating the validity of contracts is not to be regarded in any such aspect whatever. It is no part of the contract, but entirely outside of it. It operates not by virtue of the agreement of the parties, but in spite of their engagements. It is a part of the municipal law, "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong." It operates as law, and not by way of private convention. It respects not the purpose of the parties, but declares the will of the law making power. It can not be superseded, waived nor impaired by the agreement of the parties. It finds its authority not in their undertaking, but in those sanctions which attend upon all municipal law.

It follows, therefore, necessarily that the repeal of such a statute in no wise impairs the obligation of a contract against which it is aimed. It has nothing to do with the obligation of contracts. It confers no vested rights upon any one. It is legislation and not a grant of rights or privileges. As legislation it is subject to repeal and when repealed it is absolutely gone. It fixes and declares rights absolutely while it is law. When it ceases to be law its operation absolutely ceases and it is not like the provisions of a contract between individuals, still binding and enforceable. The legislature may undoubtedly repeal statutes; it can not repeal contracts—what parties have agreed to is not to be impaired by subsequent legislation. But nevertheless legislation which restricts the effect of contracts or refuses a remedy upon them may be repealed; and when repealed it ceases to be law.

I desire to make a further suggestion as to the effect of the statute of 1897, much relied upon by the Circuit Court, though not by the Circuit Court of Appeals, and commented upon by counsel for the respondent, page 28 of their brief. That statute is a part of the act of 1887, relating to assessment companies, but was amended so as to read as follows:

"Every corporation doing business under this article shall annually, on or before the first day of February, return to the superintendent of the insurance department in such manner and form as he shall prescribe, a statement of its affairs for the year ending on the preceding 31st day of December, and the said superintendent, in person or by deputy, shall have the power of visitation of and examination into the affairs of any such corporation, which (are) conferred upon him in the case of life insurance companies, by the laws of this State; and all such foreign companies are hereby declared to be subject to and

required to conform to the provisions of section *5855*, 5912, *5849* and *5850*, of the Revised Statutes of Missouri of 1889, and *governed and controlled by all the provisions in said sections contained;* provided always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth *and provided.*"

By including section 5855 in that statute, that section being the so-called "suicide statute" of Missouri, it is contended that the prohibitive statute in force when the policy was written is again revived and made applicable to it and must control the rights of the parties.

I have pointed out in the brief filed with the petition that this statute was not adopted in accordance with the constitution of Missouri, by reason of the fact that it was amended in its course through the senate, so that its title was not expressive of its purport and that it was so amended as to change its original purpose (original brief, page 35 *et seq.*). But, incident to this question, if the petitioner is right in the contention that by the repeal of the act of 1879 the contract between the assured and the insurance company including the provision as to relieving the company from liability in case the assured took his own life, became effective, it is quite apparent that the legislature could not thereafter by re-enacting this suicide clause or attempting to subject assessment insurance companies to its provisions, impair the effect of a contract subsisting between the assured and this petitioner. The petitioner is insisting upon its contract with the assured.

Whether this particular clause in the policy became effective at the time the contract was entered into or, being dormant dur-

ing the time that the so-called suicide statute was in effect, became, when relieved from the prohibition of that statute, a valid engagement, the petitioner has a right to insist that it shall be protected, under the clause of the federal constitution which forbids a State passing any law impairing the obligations of contracts.

This view has not, I believe, been suggested in the briefs heretofore filed on behalf of the petitioner. I do not desire to elaborate upon it, but it is, I think, conclusive as to the effect of the law of 1897.

Respectfully submitted,

S. S. GREGORY,

Counsel for Petitioner.

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No. 254.

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Brief of Bacon for Respondent

Supreme Court of the United States.

Filed Mar. 5, 1901.

OCTOBER TERM, 1900.

KNIGHT TEMPLARS & MASONS LIFE INDEMNITY COMPANY,

Petitioner,

vs.

ROSA B. JARMAN,

Respondent.

No. 370

Brief and Argument of Respondent in Opposition to Petitioner's Motion for Writ of Certiorari and Argument in Support Thereof.

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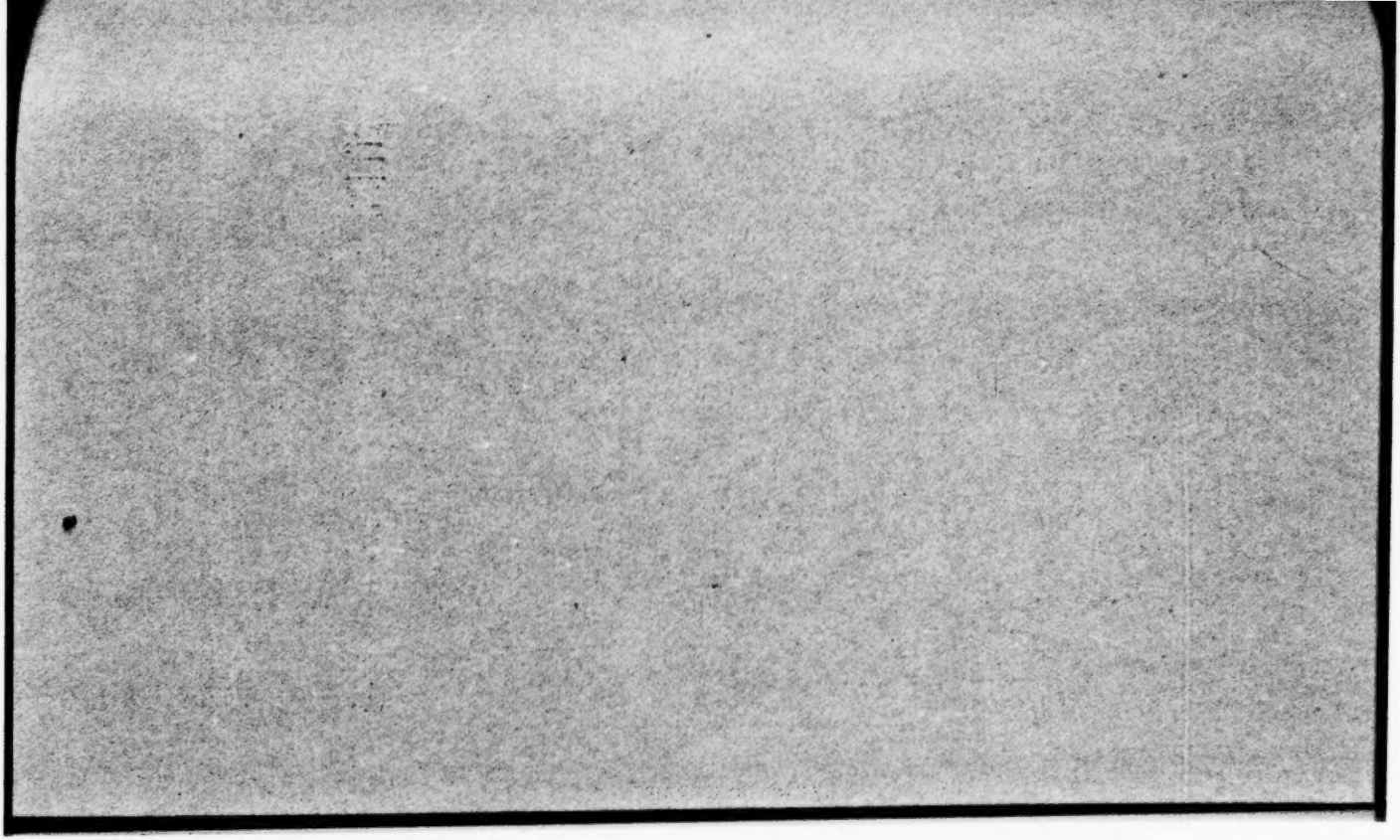

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

KNIGHT TEMPLARS & MASONS LIFE INDEMNITY COMPANY, PETITIONER,

vs.

ROSA B. JARMAN, RESPONDENT.

Brief and Argument of Respondent in Opposition to Petitioner's Motion for Writ of Certiorari and Argument in Support Thereof.

MAY IT PLEASE THE COURT:

The respondent above named, Rosa B. Jarman, believing that there is no merit in the contention of the above named petitioner, Knight Templars and Masons Life Indemnity Company, that error has been committed by the United States Circuit Court of Appeals for the Eighth Circuit, and that no valid

reason exists either in law or in equity why the writ of certiorari prayed for should be awarded, now comes and submits for the consideration of this Honorable Court authorities and reasons in opposition to the petitioner's motion for a writ of certiorari and the printed argument in support thereof.

We propose to follow in our discussion the general outline adopted by counsel for petitioner in their brief and argument, and will consider the questions of law involved in this case in the same order. The facts sufficiently appear from petitioner's statement and brief.

I.

The so-called suicide statute of Missouri entered into and formed a part of the contract between petitioner and respondent; this law was never repealed, although the subsequent law of 1887 seemed to exempt the company from the operation of such statute as far as subsequent contracts were concerned. This exemption, however, was afterwards repealed by a valid act of the legislature of the State of Missouri in 1897. Under the agreed statement of facts and the law petitioner was precluded from its defense of suicide.

1. The statute of the State of Missouri given on page 5 of petitioner's brief, formed a part of the contract between petitioner and respondent, and under it the so called suicide clause in the policy sued on was itself void.

It is unnecessary to state that, inasmuch as what is now known as assessment insurance, was not recognized by the laws of Missouri prior to 1887, the defendant company prior to 1887 was, in the eyes of the law, the same as any other life insurance company. It has been so adjudicated in

> Knight Templars' & Masons' Life Indemnity Co. v. Berry, 50 Fed. Rep. 511; 1 C. C. A. 56.

The policy sued on was issued before 1887.

In support of the contention that the statute in question formed a part of the policy, making the provision therein contained, that it should be void in case of suicide, itself absolutely void, we cite the following authorities: —

In the case of Equitable Life Assurance Co. v. Clements, 140 U. S. 226, this court says: —

> "The statute is not directory only, or subject to be set aside by the company with the consent of the assured, but is mandatory and controls the nature and terms of the contract into which the company induces the assured to enter."

The Supreme Court of Missouri has held that the statute in question formed a part of the policy just as much as if written out in full in it.

In the case of Havens v. Ins. Co., 123 Mo. 403–417, it is said: —

> "The statute enters into and forms a part of the contract of insurance as completely as if written into it."

In Cravens v. New York Life Ins. Co., 148 Mo. 583–604, the court said:—

> "Being a Missouri contract the statute then in force, with respect to the subject-matter of the contract, entered into and became a part thereof as much so as if copied therein."

In the case of

White v. Ins. Co., 4th Dillon, 177,

Judge Dillon, speaking of certain provisions in life insurance policies, issued in this State after the enactment of Section 5849 Revised Statutes, 1889, said: —

> "The Legislature of Missouri conceived, and we think wisely, that the promises held forth to the assured in the policies in general use were too often a delusion and a snare, and as the courts were powerless to correct the evil, it ought to be corrected by statute. * * * We are of opinion that policies issued and delivered in Missouri, after that act took effect, fall within its protective operation; and as to such policies the act is to be treated as if incorporated therein. * * * The general rule is that laws in existence are necessarily referred to in all contracts made under such laws, and that no contract can change the law."

Many other cases affirm this doctrine, from which a few only are cited: —

Christian v. Ins. Co., 143 Mo. 460–465;
Wolff v. Burning, 74 Mo. 87;

Reed v. Painter, 129 Mo. 674;
Horton v. New York Life Ins. Co., 151 Mo. 604.

Doubtless, if this petitioner corporation had been only doing business in the State of Missouri, the so-called suicide clause would have been omitted from its policies, but, because in most of the States there is no prohibition of the defense of suicide, and it was desirable to use a uniform policy, the policies issued in the State of Missouri contained conditions avoiding them in the case of suicide, although such a condition in the policy was made void by the statute, and the parties will be presumed to have so understood the contract at the time they entered into it.

2. Counsel for petitioner are in error when they assume that the suicide statute of Missouri was ever repealed by the legislature. It is true that in 1887 the legislature of Missouri passed an act under the terms of which it has been held, especially in the case cited by petitioner, of Haynie v. Indemnity Company, 139 Mo. 416, that from the date of its adoption the proviso did exempt assessment companies from the operation of the suicide statute.

In this connection we desire to refer to the recent case of

Aloe v. Fidelity Mutual Life Assn., 55 S. W. R., at page 993.

The Supreme Court of Missouri is composed of two divisions, and whenever an opinion

is rendered in either division to which one of the judges of that division dissents, and under certain other contingencies, the case may be transferred to the court in banc where both divisions meet as one court and reconsider the case. In the Aloe case an opinion was rendered by a majority of the judges in one of the divisions overruling the Haynie case, and certain other cases referred to in the opinion, by which that court had held that assessment life insurance companies were exempt from the provisions of the statute of Missouri relating to the defenses of suicide and misrepresentation. A majority of the court were in favor of less radical action and therefore disagreed with the division opinion, and allowed the cases in question to stand although questioned. This is an acknowledgment which has weight here.

(a) If the suicide statute entered into and formed a part of the contract sued on, the subsequent adoption of the law of 1887, under which assessment companies were exempt from the operation of certain sections of the insurance laws, did not affect the policy in question, because such law had no retrospective effect and did not in any way impair or repeal the statute, but simply created an exemption as to future contracts.

The constitution of Missouri provides, section 15, article 1, that no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, can be passed by the General Assem-

bly. Hence, the law of 1887 only operated prospectively and on future contracts.

In the case of

Hope Mutual Life Ins. Co. v. Flynn, 38 Mo. 483,

the court, citing Sedgwick on Construction of Statutes, Sec. 188, said: —

> "A statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed, is to be deemed retrospective or retroactive."

This court in the case of

City Railway Company v. Citizens Railway Company, 166 U. S. 557,

has said: —

> "But it (the act of the legislature), certainly should not be construed to act retrospectively or to affect contracts entered into prior to its passage unless its language is so clear as to admit of no other construction."

This was said in a case where there was no constitutional prohibition by the State constitution of retrospective laws; much more is it true when, under the constitution of the State of Missouri, the legis-

lature had no power to apply the statute to contracts already in force.

Bearing directly on this question is the case of

Voight v. Kersten, 164 Ill. 344; 45 N. E. R. 543,

where the court says: —

"It would seem that the construction of the act passed in June, 1893, giving it the effect to destroy that right of appointing a beneficiary, or naming another beneficiary, which existed in favor of the deceased under his contract prior to the passage of the act, would be to give the act a retrospective effect, and destroy the obligation of the contract entered into between the deceased and the complainant. It is a recognized rule in the construction of statutes that they should be so construed as to give them a prospective operation only, and they should be allowed to operate retrospectively only where the legislative intention to give them such operation is clear and undoubted."

See also Moore v. Chicago, &c., Society (Ill.). 52 N. E. R. 818.

The Supreme Court of Missouri says: —

Barton Co. v. Walser, 47 Mo. 189–201.

"As between individuals the Legislature has no power to interfere and declare an act or deed valid which was previously void. Therefore, when the Legislature undertook by an enactment to declare a deed

> legal and binding which was made by an insane person, it was decided by this court that the act was unconstitutional and of no effect. **Routsang v. Wolf, 35 Mo. 174.**"

(b) It is, however, contended that under the decision of this court in

Ewell v. Daggs, 108 U. S. 142,

the suicide statute applies only to the remedy, and is not a part of the contract. We answer this by two suggestions: If the suicide statute in question formed a part of the contract, then certainly it did not relate to the remedy. And, again, as the opinion of the court below well says:—

> "In Ewell *v.* Daggs a purely statutory defense existing under the usury laws of a State when a certain contract for the loan of money was entered into, was taken away by a subsequent constitutional amendment, and it was held in substance that such repeal did not impair the obligation of the contract. The court in that case regarded the usury law that had been repealed as in the nature of a penal statute inflicting a penalty upon the lender which any subsequent legislature could repeal and thereby remit the penalty."

The defense of suicide in this case is made under the terms of a clause of the contract, which, if void under the statute at the time it was made, was void for all time, and could not be revived or given life, even if the suicide statute was in fact afterwards repealed, which it was not.

3. We pass now to the effect of the law of 1897, repealing the exemption which had previously existed in favor of assessment companies, and because of which petitioner withdrew from doing business in the State. We think that this law has an important bearing on this case, both for the reason that, if valid, it repeals the exemption and makes the contention of petitioner of no value, and, on the other hand, if the law was not valid it must be taken to be an expression of legislative intention.

(a) It is urged that the act of 1897 is unconstitutional because it does not conform to the requirement of the constitution of Missouri that "No bill * * * shall contain more than one subject, which shall be clearly expressed in its title."

The object of this provision is to prevent "log-rolling," and surprise and fraud on members. State v. Miller, 45 Mo. 495–498.

> "The courts in all the States where a like or similar provision exists, have given it a very liberal interpretation, and have endeavored to construe it so as not to limit or cripple legislative enactments any further than what was necessary by the absolute requirements of the law. * * * It is sufficient that the title fairly embraces the subject-matter covered by the acts; mere matters of detail need not be stated in the title." State ex rel. Wolf v. Bronson, 115 Mo. 271, 276.
>
> "A mere reference to the section to be amended, without other description of the subject-matter of the amendatory law, is, under the ruling of this court, a sufficient title to an act which deals exclusively with

the subject of the section amended." State ex rel. v. Heege, 135 Mo. 112, 118.

The application of the last preceding rule is decisive of the question raised here.

In the statement of the title of session acts 1897, 129, we find the following, *inter alia*, "An Act to repeal Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, entitled, etc."

Upon analysis it is disclosed that R. S. 1889, section 5869, deals with four, and only four, sub-topics relating to the law of insurance. What are they?

First, annual statement.

Second, visitation and examination by superintendent of insurance.

Third, a statement of the law to which "such foreign companies" are subject and required to conform.

Fourth, a provision in regard to the relation of such companies to the general insurance laws of the State.

By no course of reasoning can we arrive at the conclusion that the amendatory section deals with any other than these four subjects. True, the amendatory section in making the statement of the law to which foreign companies are subject and required to conform, does not refer to the section of the statute to which the old section refers, and it refers to other sections, but, as we have already seen,

" mere matters of detail need not be stated in the title."

State ex rel. v. Bronson, 115 Mo. 271, 276.

The only difference between the old section and the amendatory act, is in regard to the law which " such foreign companies " are subject.

It will be readily seen that if the title must so minutely enter into details as to enumerate these differences, the declaratory clause of a statute would be only a repetition of the title. Since the amendatory act ('97–129) deals exclusively with the subject of the section amended, and makes specific reference to the section amended, the subject of the amendatory act is clearly expressed in its title.

> " The practice of legislation by reference to sections of the authorized version of the statutes (without other description of the subject of the amending act) has been followed quite generally in this State on the faith of early rulings of the Supreme Court approving such methods of law making. So much has been done, and so many rights have been acquired, on the basis of those rulings, that we hold that the question of their correctness ought not to be re-opened at this day. We adhere to them and follow them as an expression of the settled law of Missouri."

The State ex rel. v. County Court, 128 Mo. 440.

(b) In the case of Toomey v. Supreme Lodge Knights of Pythias, 147 Mo. 129–137, the Supreme

Court of Missouri sitting in banc, by an unanimous opinion, referring to the section of the statute in question and also to the law of 1897, said: —

> "As to the first class, regular or old line (companies), Section 5855, Art. 2, Chap. 89, R. S. 1889, provided: 'In all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void.'
>
> This provision, it has been held, applies only to the first class above specified and does not apply to the second class, assessment companies (Haynie *v.* Knight Templars & Masons' Life Indemnity Co., 139 Mo. 416) because they are organized under Art. 3, Chap. 89, R. S. 1889, and it does not apply to the third class fraternal-beneficial associations — because by section 2823, Art. 10, Chap. 42, R. S. 1889, it is provided that, 'such fraternal beneficial societies shall not in any way be subject to the insurance laws of the State.'
>
> Whether this discrepancy was designed, or was an oversight by the General Assembly, it is not the province of the courts to say, but it appears it was a mistake, *for in 1897, the legislature extended the law to all classes of insurance* (Acts. 1897, p. 129).

4. It is contended by the petitioner that the so-called suicide statute is not applicable to this case, where a man takes his own life while insane, because

the words "commit suicide," as used in the statute, apply only to a felonious suicide.

In considering this question we respectfully claim that the suicide statute must be liberally and not strictly construed, because it was intended to be remedial in its effect.

(a) Undoubtedly in construing the law the intent of the lawmakers must be considered. It is a part of legal history that insurance companies in order to restrict and limit their liability, among numerous other conditions and exemptions, stipulated that they should not be liable where the person insured committed suicide. In passing upon this defense the courts, beginning with the case of

Breasted v. Farmers &c. Co., 4th Hill, 73–75, which was afterwards cited and approved by this court in the case of Manhattan Life Ins. Co. v. Broughton, 109 U. S. 121, held that a man could not commit suicide if insane, the act of suicide being predicated on an intent. As the court said in the latter case:—

> "If a man's reason is so clouded or disturbed by insanity as to prevent his understanding the real nature of his act, as regards either its physical consequences or its moral aspect, the case appears to us to come within the forceful words uttered by the late Mr. Justice Nelson, when Chief Justice of New York, in the earliest American case upon the subject: 'Speaking legally also (and the policy should be subjected to this test) self-destruction by a fellow-being bereft of reason can with no more propriety be ascribed to his own hand than to the deadly instrument that may have

been used for the purpose, and whether it was by drowning, poisoning or hanging, or in any other manner, was no more his act in the sense of the law, than if he had been impelled by irresistible physical power.' Breasted *v.* Farmers &c. Co., 4 Hill, 73–75.''

Then the insurance companies, to avoid the effect of these decisions, inserted in their policies the words, "suicide, sane or insane, voluntary or involuntary." This clause was held to be effectual and to relieve the companies in all cases of suicide, although this court has pointed out a possible case in which such a clause would be held of no effect.

In the case of Bigelow v. Insurance Co., 93 U. S. 284, the court cited with approval the case of Pierce v. Travelers Ins. Co., 34 Wis. 389, in which, in a case where the words of the policy provided that it should be void if the insured "should die by suicide, felonious or otherwise, sane or insane," the court there said: —

"The condition here relieves the company from liability only when the self-destruction was intentional, or committed by a party who was conscious of the nature of the act he was committing, or about to commit, and conscious of its direct and immediate consequences, though the act may have been unaccompanied by any criminal or felonious intent or purpose. *It does not apply or relieve the company, where the death of the assured was accidental, or may be properly be said to have been caused by accident, though brought about, it may be, by his own hands, or by some dangerous or destructive instrument held in them.*"

(b) Courts have very frequently commented on the

absurd, and self-contradictory expression "suicide, sane or insane, voluntary or involuntary," although the Supreme Court of Missouri in the case of Haynie v. Indemnity Co., 139 Mo. 416, says that the words will be construed in their popular sense as referring to any act of self-destruction.

If the words of an insurance policy are to be strictly construed against the insurer as has been the settled law for nearly one hundred years, it is time that this clause in insurance policies should be held to be meaningless and of no effect.

(c) In the foregoing remarks we have used the expression, "suicide," although the words in the policy are "self-destruction." We may take it for granted that it will be conceded that all such words as, "self-destruction," or "take his own life," or "commit suicide," or anything of that kind are synonymous.

As this court has well said in the case of Conn. Life Ins. Co. v. Akens, 150 U. S. 468-475: —

> "It was argued that the word 'self-destruction' as here used was more comprehensive than suicide, and included an intentional, though insane killing of oneself. But the two words are treated as synonymous in the very clause in question as well as in the former opinions of this court. The act whether described by words of Saxon or Latin origin, or partly of the one and partly of the other, 'dying by his own hand,' 'self-killing,' 'self-slaughter,' 'suicide,' 'self-destruction,' without more cannot be imputed to a man who, by reason of insanity (as is commonly said) 'is not himself.'"

(d) The meaning of the suicide statute might be aptly expressed if it read as follows: "The defense of suicide in this State, as to policies hereafter issued, shall not be permitted, unless the insured intended at the time the policy was issued to take his own life, and any stipulation in the policy to the contrary shall be void."

In the first case decided after this statute went into effect,

Keller v. Travelers Ins, Co., 58 Mo. App. 557, the court said: —

> "The plain purpose of the statute *supra* was to prevent the insertion in policies of life insurance of exceptions to liability on the ground of the suicide of the insured, unless it could be proven 'that the insured contemplated suicide at the time he made the application for the policy.' This was in effect a legislative declaration of the public policy of this State. That it was intended to limit the power to contract for a lesser liability in cases of death by suicide, not within the limitation expressed in the statute, is also apparent from its terms, to wit: 'and any stipulation to the contrary shall be void.'"

And the Supreme Court of Missouri refers to the statute as meaning what we have said. In the case of,

McDonald v. Life Assn., 154 Mo. 627,

the court said: —

> "Measured by these rules this company, so far as the face of the contract shows, is not an assessment

company, and hence Sec. 5855, Revised Statutes 1889, applies, and as the defendant has not attempted to show, as that section requires, when the defense of suicide is interposed, that the insured contemptated suicide when he applied for insurance, there has been no valid defense pleaded."

And again the court says: —

(1898) Logan v. Fidelity &c. Co., 146 Mo. 114-123.

"This section was not designed to limit the persons of a particular class of companies, as such by name, but its terms established a general rule, applicable to any company whose contracts insure against death, and which attempts to avoid liability in case of suicide, except those companies doing business on the assessment plan that were expressly exempted by reason of the provisions of section 5869, Revised Statutes 1889, of the Act authorizing such companies to be organized and prosecute business in this State, and the force of that provision in favor of the assessment companies has been stricken down by an act of the legislature in 1897, so that the *defense of suicide* is now alike unavailing, etc. * * * If one holds *a general life policy* and an accident policy and is killed by lightning or *commits suicide*, so that he may be said to have died by accidental means, both the companies should pay and the stipulation against liability in the *event of suicide* in the policies should be no more a defense, etc."

In this connection we may well refer to the words of Judge Campbell in the case of

John Hancock Ins. Co. v. Moore, 34 Mich. 42, where he says: —

"Some stress is laid on the term suicide as if it means a wrongful act or self-murder. It has no such restricted meaning. It means self-killing just as homicide means killing any one else. But there may be excusable homicide as well as felonious, and suicide was only cognizable at law when the person was *felo de se* or guilty of a felonious act. If *non compos mentis*, the actor in homicide, or suicide, commits no crime. * * * A construction which punishes a person who is not in fault is not to be favored if it can be allowed at all. The very object of life insurance is to provide for death by disease or in the ordinary course of nature. Death by his own hands or in the case of one not *compos* is as much the result of disease as death by fever or consumption. The act of an insane man is morally no more his act than if it were mechanical."

The legislature must be presumed to have had in view the condition of affairs at the time the statute was enacted and to have intended the statute to make void the condition of the policies of life insurance companies providing that such policies should be void in case the insured took his own life "sane or insane, voluntary or involuntary."

(e) That this construction is right and that it is also true that in the popular sense any act by which a person takes his own life is loosely referred to as "committing suicide," is shown, not only by the personal experience of every man, but it appears also that it was so used even by counsel in this case. Throughout the brief presented by petitioner to the

court on the trial of this case in the lower court, they referred to the act of Jarman as his "committing suicide."

Thus on page 3 of the brief in the trial court, the substance of the seventh paragraph of the agreed statement of facts, is stated as follows: "John P. Jarman *committed suicide* on September 12th, 1898, while he was insane."

On page 5 of the same brief counsel says: "The contract of membership between John P. Jarman and the defendant company provided that in case of his *self-destruction or suicide*," the defendant would pay only the assessment, etc.

And on page 6 of the same brief counsel says, in stating the points involved in the case: —

> "Within the past five years the defendant company has had two cases litigated in Missouri upon policies *where the members committed suicide*. Both policies were issued after the passage of the assessment law of Missouri noted above. It was held that the proviso in section 5869 relieved the defendant company from the operation of section 5855 referring to suicide. This was in effect deciding that as to assessment companies section 5855 was repealed by the law of 1887. The question arises in this case, did such repeal relieve the defendant company from section 5855, referring to suicide, committed by a member whose policy was issued prior to the passage of the law of 1887? The contention of the defendant company is that after assessment companies were relieved of the operation of section 5855 by the law of 1887, which provided that such companies should not be subject to any provisions of the general insurance

laws, except section 6013, referring to service of process, section 5855, being merely a declaration of the public policy of Missouri with reference to suicide, could not be invoked in any suit upon the policy of a member *who committed suicide* after this time and consequently, that the condition against suicide will defeat any recovery by the plaintiff, except the amount agreed to be paid in case of suicide, viz.: the amount paid in assessments by the member.

"If the contention of the defendant on the first point of law is maintained, the whole controversy will be settled, and the defendant will pay to the plaintiff all the money paid in assessments by the member; on the other hand, if it is held by the court that, as a matter of law, the *defense of suicide* cannot be pleaded by the defendant, the question arises whether or not the beneficiary is entitled to recover with the face of the policy either all the money paid upon the policy in "assessments" or all the money paid upon the policy in assessments during the first five years; in other words, whether or not the certificate, the constitution or by-laws, and the application, constituting the contract in question, are affected by the changes which have been made in the constitution."

On page 19 of the same brief counsel say: "In the Berry case (referring to the case, Knight Templars, etc., v. Berry, 50 Fed. Rep. 511), the suit was brought on a policy issued in 1885 by the same company to another resident of Trenton, Missouri, who also *committed suicide*."

The policy itself refers to "suicide" as equivalent to self-destruction, sane or insane, etc.

(f) Any other construction of the statute would make the same unmeaning. It has always been the law that the suicide of a sane person avoids the policy whether so stipulated therein or not.

Ritter v. Mutual Life Ins. Co., 169 U. S. 139.

And it is a reflection on the intelligence of the legislature to hold that they intended to provide that it should be no defense, in an action on an insurance contract, that the insured, when sane, intentionally and knowingly took his own life, but that it should be a valid defense, if he took his own life while insane. It is evident that the words "commit suicide" are not used in their strict legal sense, but rather in a broad and general popular sense.

(g) The wording of the agreed statement of facts is that Jarman, "while insane to such an extent as to be *incapable of understanding the nature or consequences of his act*, took his own life and came to his death on the 12th day of September, 1898, by a gunshot wound inflicted by himself."

Under the legal construction of the word suicide there can be no such thing in law as "*insane*" or "*involuntary*" suicide. It is a contradiction in terms.

Haynie v. Knight Templars, 139 Mo. 416.

We might as well talk of involuntary theft or murder. If a somnambulist should, while asleep,

shoot a man, it would not be homicide; if, while dreaming, he should shoot and kill himself, would that be *involuntary* suicide? If a typhoid fever patient while delirious should leap out of a window to escape an imaginary enemy would that act under the stipulation in this policy be involuntary suicide? Yet in this case it is agreed that Jarman did just such an act.

The wording of the policy is not such that the death of Jarman comes within the exception, for it is admitted that Jarman did not know what he was doing, or what would be the effect of his act.

It follows therefore as to Jarman's act that it is admitted that: —

He didn't know that the article he had was a gun.

Nor that it could be discharged.

Nor that if discharged it would probably injure or kill him.

He did not know that he could discharge it, nor that he did discharge it.

Nor did he comprehend in any degree what he was doing.

This was not a voluntary act, even of an insane man, nor is it anything more than a natural death from infirmity or disease.

It is the same as if Jarman touched a live electric wire, not knowing what it was, and was killed, or as if, in a perfect darkness concealing everything, he leaned against the railing of a high bridge and it gave way and he was precipitated to the rocks below and was killed.

II.

We earnestly contend, however, that the suicide statute, the Act of 1887 and the Act of 1897 are wholly irrelevant under the agreed facts in this case. It is true that in their original brief counsel for petitioner construed the 7th paragraph of the agreed statement of facts (Rec., p. 6) to mean, as they tersely state, that "John P. Jarman *committed suicide* on September 12, 1898, while he was insane." But afterwards, in the light of further reflection, petitioner concluded that such an opinion was too hasty and so contended in the United States Circuit Court of Appeals that Jarman did not legally "commit suicide" within the meaning of the Missouri statute, but took his own life, or committed suicide, while insane. If, however, Jarman died by accident or disease then all the preceding discussion is irrelevant.

The language of the seventh paragraph of the agreed statement of facts is contradictory. It seems to have been a case where the parties, in order to apparently agree, made an ambiguous and contradictory statement, which may be construed in several different ways. The counsel who prepared the case on the part of petitioner, knowing that the first sentence of the seventh paragraph would effectually eliminate the question of suicide from the case, insisted upon the second clause, "It is not contended, however, by plaintiff that said self-destruction was the result of accident." Now if Jarman, "while insane

to such an extent as to be incapable of understanding the nature or consequences of his act, took his own life, and came to his death by a gunshot wound inflicted by himself" he certainly did not take his own life with even the intent of an insane man, nor was it either a voluntary or involuntary act. It was no more a case of self-destruction than would be that of a child who exposes himself to the inclemency of the weather, catches cold and dies of pneumonia.

We have already urged upon the attention of the court some considerations as to the meaning of this seventh paragraph. We believe that, under a fair construction of that stipulation, if Jarman was incapable of understanding the nature or consequence of his act and so took his own life, it is just the same as if a man, while incapable of understanding the nature of an electric wire or the consequences of touching it, should come to his death by contact with such wire, in which case it certainly could not be said that he committed suicide. The argument of petitioner is certainly, so far as concerns the construction of the words, *commit suicide*, logical; it suggests the subtle distinctions of the metaphysicians and logicians of mediaeval times, but, if that line of discussion is to be adopted and carried to its fullest extent, then when the words of the seventh paragraph are analyzed they cannot mean that Jarman *committed suicide* in the technical meaning of the words, because, as counsel for petitioner urge, he was insane. Nor did he commit suicide while insane, because such a thing is impossible, and he

had not even the intention of an insane person. Therefore Jarman's death was due to accident.

Although it is said in this stipulation that it is not contended that Jarman died from accident, in view of the first sentence of the stipulation it must be conceded that Jarman's death was, when viewed in the light of the decisions of the courts, either an accident or else it was the result of disease.

It often occurs that a man in public or business life overworks and keeps late hours, so that, to use a popular expression, he burns the candle at both ends, and finally dies of nervous prostration or Bright's disease as the direct result of his own imprudence. Now, in such a case, it might with equal propriety be urged by the insurance companies that such a man committed suicide involuntarily, yet no court would sustain such a contention.

III.

It is urged, however, that the amount of respondent's recovery is too large and should have been limited to the $5,000 without regard to the amount of assessments paid. In other words, it is contended that the company had the right to, and did, amend its laws so as to reduce the amount of the policy and eliminate the part of the contract which provides for the return of the assessments paid.

1. In the first place we claim that the amendments of the laws had no retrospective effect nor were

they intended to have that effect, nor do they apply to existing contracts.

The policy is found on page 14 of the transcript, where the promise is to pay "the sum of $5,000 and all the money paid on the policy in assessments subject to the limitation as to the amount of such payment as is provided in Sec. 1 of Art. 7 of the constitution on the back of this policy."

Sec. 1 of Art. 7 simply provides (Rec., p. 29) :—

> "Sec. 1. Upon due notice and satisfactory proof of the death of a member of this company the board of directors shall within sixty days pay the widow, children or heirs of the deceased member (in the order named unless otherwise ordered by the member during his lifetime, or in his will) the amount set forth in the deceased member's policy of membership.
>
> Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment, provided it shall not exceed $5,000, and all the money paid on the policy in assessments. And a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates."

The last amendment of February 20th, 1894, was by striking out all of the proviso.

This then left the law as amended to only consist of the first paragraph, that upon due notice and proofs of death the company should pay the bene-

ficiaries in the policy "the amount set forth in the deceased member's policy of membership."

Certainly there is nothing here to indicate in the least any intent on the part of the company to affect the policy. The direction is that the directors shall pay to the insured the amount specified in the policy, and it was and is agreed under section 1 of art. 4 of the constitution (Rec., p. 24), that the policy

> "Shall constitute the basis of settlement with the beneficiaries."

We contend, therefore, that under the provisions of the constitution and the by-laws themselves, both as originally existing and also as amended (for it must be admitted that the contract is to be strictly construed against the company) the policy as issued must fix the amount to be paid.

It is only necessary upon this point to cite a few authorities.

In the case of

> Carnes v. Iowa Traveling Men's Association (Iowa), 76 N. W. R. 683,

the court said: —

> "Nothing in it (the constitution) authorized the association to amend, and thereby bind a member to any change in the contract without his assent, nor do the amended articles purport to change existing contracts or to authorize any such change by the adoption of by-laws. In the absence of such provisions, the

articles and by-laws as amended cannot be treated as retrospective in their operation. Mere silence as to the effect of revision and amendment of the constitution and by-laws will not warrant the inference that any change wrought will limit or extend the obligation heretofore created by the issuance of certificates of membership. Statutes are construed so as to give them a prospective operation, unless the intention that they operate retrospectively is clear and undoubted, and it is not perceived why the same canon of construction should not be applied to the rules adopted by a mutual insurance association for the transaction of its business and the government of its members."

The same principle is laid down in

Spencer v. Grand Lodge, 65 N. Y. Supp. 1146; affirming 48 N. Y. Supp. 590;
Grand Lodge, etc. v. Stumpf (Tex.), 58 S. W. R. 840;
Hobbs v. Association, 82 Iowa, 107; 47 N. W. 983;
Sieverts v. Association, 95 Iowa, 710; 64 N. W. 671;
Benton v. Brotherhood (Ill.), 34 N. E. 939;
Moore v. Chicago, etc., Assn., 76 Ill. App. 433.

We refer again to the authorities cited in Division I — 2 (a) of this brief.

2. If we admit that the company did intend and did attempt to reduce the amount to be paid under the policy, and that the amendments are apt for the

purpose, then we say that the company had no power to make such a change because the agreement of the member to abide by the constitution "as it now is or may be constitutionally changed hereafter," does not enable the association to bind him by subsequent changes of the constitution reducing the amount stipulated to be paid under the policy.

In the recent case of Pokrefky v. Detroit &c. Assn. (Mich.), 80 N. W. R. 240, the Supreme Court of Michigan said: —

> "The by-laws as they existed at the time he became a member constituted a part of the contract. If the trustees had the power to limit the amount of payment to be made at $1,500, they could limit it to a much lesser amount. The act under which the company was organized permitted the trustees to change the by-laws at pleasure; but it cannot be said that this was intended to place it within the power of the trustees to adopt by-laws that would have a retrospective operation upon the contracts of the company made before new by-laws were adopted. While the trustees undoubtedly had the power to pass or change by-laws necessary for the well government of the affairs of the company, it cannot be said that it was intended to clothe them with the arbitrary power to reduce the amount due beneficiaries under contracts made before new by-laws were passed. The same question was presented in Insurance Co. *v.* Connor, 17 Pa. St. 136, and it was there held that the by-laws could have no retrospective effect."

In one of the cases cited by counsel for petitioner,

Lloyd v. Sup. Lodge Knights of Pythias, 98 Fed. Rep. 66, Judge Seaman said: —

> "No authority rests in the association under this reservation to repudiate obligations as insurer which have become vested under the contract, and the by-law which imposes a new condition or exempts from liability from a cause of death previously within the insurance cannot be made retroactive to impair or destroy liability for a pre-existing cause which arose under the contract."

In Hobbs v. Iowa Benefit Association, 82 Iowa, 107; 47 N. W. R. 983, the court said: —

> "The corporation has no capacity, as a legislative power from which it derived existence has no competency, by laws of its own enactment to disturb or divest rights which had created, or to impair the obligation of its contracts, or to change its responsibilities to its members, or to draw them into new and distinct relations."

The leading case in Missouri is that of Hysinger v. Supreme Lodge, etc., 42 M. A. 635; in which case the rule is laid down by the court, as contained in an extract from Niblack on Benefit Societies, as follows: —

> "But when the provision of the charter or a by-law of the society constitutes a part of the contract of insurance, its alteration without the consent of the member cannot affect the contract."

In support of this doctrine the court cites a num-

ber of authorities, including Morrison v. Wisconsin, etc., Co., 59 Wis. 162, a case exactly in point, which it is not necessary to more than refer to here.

In Grand Lodge v. Sater, 46 M. A. 452, the court has said: —

> "As to other amendments of the constitution and by-laws, Sater was bound, but not so as to changes directly affecting his contract of insurance. An insurance contract such as we have here is as sacred as any other contract, and it cannot be modified or changed by the society except by the express consent of the member."

There are a large number of cases directly supporting this doctrine. We refer to the following: —

Wist v. Grand Lodge, 22 Oregon, 271; 29 Pac. Rep. 610;

Hale v. Equitable Aid Union (Pa.), 31 Atl. Rep. 1066;

Weiler v. Equitable Aid Union, 36 N. Y. Supp. 734; 92 Hun, 277;

Margesson v. Massachusetts Benefit Assn., 165 Mass. 1132; 42 N. E. R. 1132;

Startling v. Sup. Council, 108 Mich. 140; 66 N. W. R. 340.

In the case of Voight v. Kersten, 164 Ill. 314; 45 N. E. R. 543, the Supreme Court of Illinois held that the right to designate a beneficiary which was unlimited at the time the certificate was issued, could not be taken away by a subsequent act of the

legislature. If the legislature could not take away the right to designate a beneficiary, much less can the directors of this company take away part of the amount promised its policy holders.

In the case of Startling v. Supreme Council, 108 Mich. 140, above cited, the court says: —

> "It is claimed by way of defense that in 1890, and before this suit was brought, the causes of total disability were reduced to three: (1) Entire and incurable loss of vision; (2) entire loss of both arms, or both legs; (3) hopeless and incurable insanity; and that, inasmuch as the plaintiff had agreed to observe the rules and regulations of the order, this change of causes of total disability would prevent his recovery for the total disability growing out of the paralysis. It has been held that where a mutual benefit society issued to a member a certificate of insurance, the subsequent adoption of a by-law by the society could not modify or change the contract of insurance without the express consent of the member. Grand Lodge *v.* Sater, 44 Mo. App. 445; Insurance Co. *v.* Conner, 17 Pa. St. 163; Becker *v.* Society, 144 Pa. St. 232; 22 Atl. 699; Morrison *v.* Insurance Co., 59 Wis. 162; 18 N. W. R. 13. To the same effect is Becker *v.* Insurance Company, 48 Mich. 610; 12 N. W. 874."

In the case of Hale v. Equitable Aid Union (Pa.), 31 Atl. 1066, above cited, the court says in a case much like the one at bar: —

> "The benefit certificate was accepted by plaintiff subject to the right of the corporation to amend its by-laws, and to change the contract in so far as the by-

laws make it, but not in so far as the contract is made by the certificate itself."

In an action on a similar certificate in New York, the Supreme Court of that State says (Weiler v. Equitable Aid Union, 36 N. Y. Supp. 734; 92 Hun, 277): —

"The main question relates to the effect to be given by the by-law passed in March, 1893. This was passed as a substitute for the by-law under which the policy to plaintiff was issued, and it operated to change the definite and absolute contract of defendant to pay in case the plaintiff was alive in good standing at the end of 11 years, into a contract to pay only in case plaintiff was totally disabled physically, and then only one-tenth thereof annually. It was essentially a new contract, and one upon which the plaintiff might never receive anything. The defendant claims that this change, though radical, is binding on the plaintiff, because in his application he agreed to accept the certificate, subject to such laws, rules and regulations as now exist or may hereafter be adopted by and governing said corporation. There is no finding that plaintiff assented to the change, other than as force may be given to the above clause of the application. A power reserved to make by-laws means a power to make reasonable by-laws. Kent *v.* Mining Co., 78 N. Y. 159, 183; Ang. & A. Corp. 347. This principle applies to associations like the defendant. Bac. on Ben. Soc. (2d ed.) 85. What are to be deemed reasonable depends on the objects and purposes of the society. In People *v.* Society, 24 Barb. 570, 575, it is said the by-laws must be reasonable, and adapted to the purpose of

the corporation. It must be consistent with its charter. Bac. on Ben. Soc. 83. Here the object and purpose of the corporation, as appears from the finding of fact, were, among other things, to do a life insurance business upon the assessment plan, and give certificates payable in manner and form as that given to plaintiff. The by-law in question strikes down these certificates, and to that extent changes the object and purposes of the corporation. The right of plaintiff to payment upon the contingency named in the certificate was in the nature of a vested right. Goodman *v.* Lodge, 67 Md. 117, 127; 9 Atl. 13, and 13 Atl. 627; Bac. on Ben. Soc. 289; 1 Moore Priv. Corp. 496. The plaintiff had the right to believe that the defendant would not, by by-laws, assume to change, as to him, the objects and purposes of the corporation upon the basis of which he had made his contract and for 10 years and upwards had performed upon his part. As to the plaintiff, the new by-law was simply repudiation of a positive contract. We are referred by appellant to the case of Hutchinson *v.* Supreme Tent, etc., 68 Hun, 355; 22 N. Y. Supp. 801. In that case the question of the reasonableness of the by-law was not considered and was not involved, as, without it, the plaintiff was held not to be entitled to recover at all. In the present case the court below held that the by-law in question, so far as the contract between the parties to this action is concerned, is an unreasonable by-law, as its effect is to infringe upon and impair the plaintiff's contract already given and rights already secured and as to this plaintiff and his contract with defendant is illegal and void."

In a recent case decided by the St. Louis Court

of Appeals, Smith v. Supreme Lodge Knights of Pythias, 83 Mo. App. 512–526, the court says:—

"The fact that it (the association) reserved the right, by the assent of the member, to make future laws obligatory upon him, could not justly be deemed to comprehend the right to abate its debt, for that would *pro tanto* destroy the contract between the parties and to permit one person to accept the consideration of a debt and subsequently to deny a material part or all of such debt, would authorize a patent fraud, which the law does not deem to have been within the intent of a mere general agreement for changes in the contract. Such an agreement only contemplates those changes which fairly consist with the full obligation entered into. It does not imply that the obligation itself should be lessened or destroyed at the will or caprice of the obligor, for that would involve injustice to one and ill design on the part of the other of two parties to a contract. The law does not seek to compass an injury; neither does it impute an intent to defraud in advance of proof. In associations like the present, which are professedly formed to provide a sum certain to a designated recipient, the parties are not to be understood as intending by an agreement on the part of the assured to obey future laws, that the indemnity specified shall be materially impaired or destroyed, after full consideration paid, under the operation of a subsequent by-law, which, like the one under review, provides for a forfeiture of material rights upon an event which the member, according to this record, could not avoid — death by self-destruction when insane. Of course, such a clause, if it had been inserted in the original contract, might have been available in some jurisdic-

tions, not to defendant, however, in contracts made in this State. Toomey *v.* Supreme Lodge K. of P., 147 Mo. 129; same case, 74 Mo. App. 507. That would present a very different question from the one before us. What we have to deal with is, not the enforceability of such a clause if embraced in the original agreement between the parties (as in the Toomey case, *supra*), but its injection into their contract per force of an agreement to abide by further by-laws. If it is thus read into the contract between the parties it necessarily affects its substance and the intent of the right to recover thereon, and is therefore a material alteration of an agreement fairly entered into and upon a full consideration. We cannot infer that this was the result had in view when the contract was made as shown in this record, nor do we think it would be a reasonable exercise for the right reserved to the order to make by-laws for the future governance of its members, to enact one which in effect took away about one-half of the sum it had agreed to pay him, after having received the consideration for the indemnity for 18 years."

Numerous cases are cited by counsel for petitioner to the effect that where a certificate is issued by a mutual benefit society, wherein the member agrees that such certificate is issued subject to laws then in force or thereafter adopted, he is bound by changes in the by-laws. These cases relate without exception to the amount of assessments to be paid by the member, or to his conduct, or to the amount of sick benefits. None of them hold that an essential element of a contract affecting substantially the rights of a member can be changed without his consent.

All the cases cited by counsel can be distinguished from the one at bar because the facts are different. There is no such agreement in this case because the language of the application is simply that the member will *abide* by the constitution, rules and regulations. The stipulation applies only to the conduct of the member, something to be done by him, as for example his residence, occupation or payment of assessments. Then again it must be read in connection with section 1, article 4, of the constitution which provides that *the policy shall constitute the basis of settlement*. Again in section 1 of article 7, it is provided that the Board of Directors *shall pay to the beneficiaries the amount set forth in the deceased member's policy of membership*. Again, in section 3, article 4, it is provided, that policies may be issued upon the basis of benefits ranging in amounts to $5,000, and all the money paid in assessments upon the policy. The policy, therefore, and not the by-laws, determines the amount to be recovered.

4. Counsel for petitioner devote considerable time to the argument that, because this is a mutual company, the policy holders and not the directors, really made the change. In the first place the modern life insurance companies, whether doing business on the assessment plan or the regular, or old line, fixed premium plan, are all mutual life insurance companies, but the court will take judicial notice of the fact that these companies are managed by directors who really govern the corporation, although it sometimes occurs that the management

take the precaution to obtain a proxy at the time the policy is issued which commits the member to whatever they do.

The company in question is a regular insurance corporation, managed by directors, but neither the directors, nor the policy holders, have any right to alter the contract of the company without the consent of the other party to it.

IV.

We have presented briefly, but we fear imperfectly, respondent's side of this case.

The court below was united upon all branches of the case except the construction of the suicide statute of Missouri. In spite of the learning and ability of Judge Sanborn, who wrote the dissenting opinion, and the respect to which his views are entitled, we respectfully insist that his habit of exact logical induction in this instance led him into error, and that the opinion of the majority of the court below is right, and that no valid reasons exist why this court should take jurisdiction of the case, or why this respondent should be further delayed in the collection of the amount which the petitioning company promised to pay, and for which it has received the full stipulated consideration.

Respectfully submitted,

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A. G. KNIGHT, AND
FREDERICK H. BACON,
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No. 254, 48

Supreme Court U.S.
FILED
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JAMES H. McKENNEY,
Clerk.

Brf. of Bacon for Respt.

Filed Apr. 21, 1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE KNIGHTS TEMPLARS & MASONS LIFE INDEMNITY COMPANY,
PETITIONER,
vs.
ROSA B. JARMAN,
RESPONDENT.
No. 254.

STATEMENT, BRIEF AND ARGUMENT FOR RESPONDENT.

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STATEMENT, BRIEF AND ARGUMENT FOR RESPONDENT.

STATEMENT OF CASE.

This was an action brought by respondent to recover $5,000 upon a policy of insurance, issued by petitioner upon the life of John P. Jarman, and dated October 24, 1885. The suit was originally brought in the Circuit Court of Grundy County, Missouri, and removed by petitioner into the Circuit Court of the United States for the Western District of Missouri. The case was tried upon

an agreed statement of facts (Trans., p. 4), whereupon judgment was rendered in favor of respondent, and against petitioner, for $6,013.30 and costs. A writ of error was sued out by the company to the Circuit Court of Appeals for the Eighth Circuit, where the judgment of the lower court was affirmed, one Judge dissenting. Whereupon a petition for a writ of certiorari was, by the company, presented to this court, and granted, and the proceedings of the Circuit Court of Appeals are now here for review.

The policy sued on was issued to John P. Jarman, husband of respondent, and, through a local agent of the company, delivered to him at Trenton, Missouri, where he resided at the time. The policy, among other conditions and limitations, provides as follows (Trans., p. 14):—

> "In case of the *self-destruction* of the holder of this policy, whether voluntary or involuntary, sane or insane, * * * then in each and every of the foregoing cases, this policy shall become null and void, and the widow and heirs, or devisees, of said member shall have no claim for benefits on this company. Provided, that in case of the *suicide* of the holder of this policy, then this company will pay to his widow and heirs, or devisees, such an amount on his policy as the member shall pay to this company on the policy in assessments on the same, without interest."

The policy specified the amount to be paid as

> "the sum of $5,000, and all the money paid on the policy in assessments, subject to the limitations as to the amount of such payment as is provided in section 1, of article 7, of the constitution on the back of this policy."

Article 7, section 1, of the constitution referred to in the policy and printed on the back thereof (Trans., p. 18) is as follows: —

"Section 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall within sixty (60) days pay the widow, children, or heirs of the deceased member (and in the order named, unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership; *Provided, that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment; provided it shall not exceed $5,000 and all the money paid on the policy in assessments; and a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates.*"

The application, which under the contract formed a part thereof, stipulates as follows: —

"I further agree, if accepted, to abide by the constitution, rules and regulations of the company, as they are now or may be constitutionally changed hereafter."

The by-laws, or constitution, which was printed on the back of the policy, provided in section 1 of article 4 (Trans., p. 16), that when an applicant has been accepted the Board of Directors shall make over to him,

"a policy of membership, *stating the terms and conditions of the contract between the parties, which policy* shall be sufficient evidence of his membership at the time it was issued *and shall constitute the basis of settlement with the beneficiaries.*"

In January, 1889, the company amended section 1, article 7, of the constitution, so as to provide that only the

assessments for the first five years should be returned to the beneficiary in case of death, but afterwards, January 14th, 1894, the company further amended the section by striking out the proviso, printed in italics, *supra*, so that the section read as follows: —

> "Section 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall, within sixty (60) days pay the widow, children or heirs of the deceased member (and in the order named, unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership."

Paragraph 7 of the agreed statement of facts is as follows: —

> "Seventh. That John P. Jarman, while insane to such an extent as to be incapable of understanding the nature or consequences of his act, took his own life, and came to his death on the 12th day of September, 1898, by a gunshot wound, inflicted by himself. It is not contended, however, by plaintiff, that said self-destruction was the result of accident."

Petitioner claimed that on this agreed statement of facts respondent was only entitled to recover the amount of assessments paid by the insured, John P. Jarman, because he was guilty of self-destruction.

The second defense was that, because of the above amendment of the constitution in 1894, respondent, if entitled to recover in spite of the provision as to suicide, was only entitled to recover $5,000, the face of the policy, and not in addition thereto the assessments that had been paid.

To this first contention of the company respondent answered that at the time of the issue of the policy

in question the petitioner company was a regular life insurance company and hence was subject to the provisions of Section 5855 of the Revised Statutes of Missouri of 1889, which was Section 5982 of the Revised Statutes of 1879, which section of the statutes entered into and became a part of the contract, and, inasmuch as it was not contended that John P. Jarman contemplated suicide at the time of the issue of the policy, the company was precluded from its defense of suicide. Moreover, that, legally speaking, Jarman did not commit suicide, either in a technical or a popular sense, but, under the language of the agreed statement of facts, died from disease.

As to the second contention the respondent claimed that, inasmuch as the policy fixed the amount to be recovered, the company had no right by an amendment of its constitution or by-laws, to reduce the amount of the policy. She also claimed that it does not appear from the amendment of the by-laws, nor the agreed statement of facts, that the amendment of the constitution had, or was intended to have, any retrospective effect or took away the right to recover the assessments, or was intended to do so, or had anything more than a prospective operation, applying to policies issued after the amendment was made, because the constitution as amended still provided that settlement with the beneficiaries should be made *upon the basis of the policy*.

It was sought by petitioner to avoid the force of the suicide statute by the claim that, by the act of the Legislature of Missouri of 1887, recognizing the business of life insurance upon the assessment plan and exempting such companies from the insurance laws of the State, the suicide statute was repealed so far as this contract was concerned. It further contended that the words in the statute, "committed suicide," only referred to a felonious suicide, and that the defense interposed in this case was not the

defense of suicide within the meaning of the statute, which therefore was not applicable. It was further contended that although the Legislature in 1897 repealed the exemption of assessment companies made in 1887, such law of 1897 was void, because constitutional requirements as to its method of enactment were not complied with.

The Circuit Court rendered judgment in favor of plaintiff, holding against petitioner on all its contentions, which judgment was affirmed by the Circuit Court of Appeals, or a majority of the judges thereof.

BRIEF AND ARGUMENT.

I.

The policy sued on was issued subject to the laws of the State of Missouri in force at the time of its issue, which entered into and formed a part of the contract, and hence the provision that the policy should be void in case of the suicide of the member was itself void.

Petitioner, defendant below, is a life insurance company, and the contract sued on is a policy of life insurance. Unless the laws of the State in which the policy is issued make some distinction between different classes of insurance companies or their contracts, all are equally subject to the insurance laws of the State and it is immaterial what kind of a company it is. In the policy sued on the company agreed, for a certain consideration, to pay a specified amount upon the happening of the event insured against, namely, the death of John P. Jarman. Under the recognized definitions of insurance, this was a contract of life insurance, and, unless specially exempted from the insurance laws of the State of Missouri, where the policy was issued and delivered, it is governed by the laws of that State.

State ex rel. &c. *v.* Merchant's Exchange Benevolent Assn., 72 Mo. 146;
National Union *v.* Marlow, 4 U. S. App. 95; 21 C. C. A. 89; 74 Fed. Rep. 775;
Toomey *v.* Supreme Lodge Knights of Pythias, 147 Mo. 129–135.

The policy in question, having been issued in the State of Missouri, in October, 1895, and before the act of the

Legislature of Missouri of 1897, regulating the business of assessment insurance, was adopted, the laws of the State of Missouri relative to insurance, and especially Section 5982 of the Revised Statute of Missouri of 1879, known as the suicide statute, entered into and became part of the contract, and the policy was in all respects subject to it.

In the case of

New York Life Insurance Company *v.* Cravens, 178 U. S. 389,

affirming the case of Cravens *v.* New York Life Insurance Co., 148 Mo. 583, this court approved the declaration of the Supreme Court of Missouri, in which it said: —

> "Being a Missouri contract the statute then in force, with respect to the subject-matter of the contract, entered into and became a part thereof as much so as if copied therein."

In that decision, however, this court simply followed the rule previously laid down in the case of Equitable Life Assurance Co. *v.* Clements, 140 U. S. 226, where the court says: —

> "The statute is not directory only, or subject to be set aside by the company with the consent of the assured, but is mandatory and controls the nature and terms of the contract into which the company induces the assured to enter."

In the case of

White *v.* Ins. Co., 4th Dillon, 177,

Judge Dillon, speaking of certain provisions in life insurance policies, issued in Missouri after the enactment of Section 5849 Revised Statutes, 1889, said: —

"The Legislature of Missouri conceived, and we think, wisely, that the promises held forth to the assured in the policies in general use were too often a delusion and a snare, and as the courts were powerless to correct the evil, it ought to be corrected by statute. * * * We are of the opinion that policies issued and delivered in Missouri, after that act took effect, fall within its protective operation; and as to such policies the act is to be treated as if incorporated therein. * * * The general rule is that laws in existence are necessarily referred to in all contracts made under such laws, and that no contract can change the law."

In many cases, decided by the Supreme Court of Missouri, in addition to the one last cited, it has been held that the provisions of the insurance laws of the State enter into and form a part of the contract as completely as if written in it.

Havens *v.* Insurance Co., 123 Mo. 403–417;
Christian *v.* Insurance Co., 143 Mo. 460–465;
Horton *v.* New York Life Insurance Co., 151 Mo. 604.

It has also been held, in another suit involving the contracts of this same company issued prior to 1897, that its policies issued before the law of 1887, were governed by the suicide statute of Missouri.

Knights Templars & Masons Life Indemnity Co. *v.* Berry, 4 U. S. App. 353; 50 Fed. Rep. 511; 1 C. C. A. 56.

The suicide statute has been held to apply to all kinds of life insurance unless especially exempted by statute.

Toomey *v.* Sup. L. Knights of Pythias, 147 Mo. 129–137.

In a recent case decided by the Supreme Court of Missouri, Kern *v.* Supreme Council American Legion of Honor, 67 S. W. 252, the following language is used:

> "And the result is that when the certificate involved in this case was issued in 1895, foreign fraternal beneficial societies were not exempt from the operation of the laws of this State relative to life insurance, and only such fraternal societies as were organized under the laws of this State were so exempt. Secs. 5849 and 5850, R. S. 1889, are continuations of the Act of March 3rd, 1874, except the requirement of that Act that interest at six per cent per annum shall be deposited as well as the premiums, which has been omitted. That Act is general. It applies to all companies. If any company or society claims to have immunity from this provision, it must put its finger upon the law granting such immunity, otherwise the law applies. Since the defendant cannot point out such exemption that law applies to it."

Unless, therefore, defendant can show an exemption from the statute at the time the policy was issued, the contract is governed by the suicide law then in force, which entered into the contract as much as if written therein.

It follows, therefore, under the authorities cited, that all the cases and authorities cited by petitioner, to the effect that the laws of the State do not form a part of the contract, have no application, because in conflict with the decisions of the Supreme Court of Missouri construing a law of that State as well as with the decisions of this court.

II.

The true construction of the suicide statute is that it was intended to apply to all cases of suicide, felonious

or otherwise, and to forbid the defense of suicide as to policies issued in Missouri, except as therein provided. Any other construction of the statute would be absurd and make it meaningless.

The judges of the Circuit Court of Appeals, in construing this suicide statute, disagreed as to the construction of the words therein, "committed suicide," Judge Sanborn holding, as contended by petitioner, that the words "committed suicide" were used by the lawmakers in a technical sense and only referred to the deliberate suicidal act of a sane man, and it therefore is important to consider the proper construction to be placed upon the statute. This statute is given in full in many places in the record, and in the brief filed by petitioner, and in the opinion of the court below, so that it is not necessary to again restate it.

In the first place we contend that this statute must have a liberal construction, and should not be strictly construed as petitioner contends.

The clause of the policy, by which it is claimed to have been avoided, provides (Trans., p. 14) that the policy shall be void,

> "in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane."
>
> "Provided that in case of the *suicide* of the holder of this policy, then this company will pay to his widow and heirs or devisees such an amount on his policy as the member shall have paid to this company on this policy in assessments on the same without interest."

1. "*Self-destruction*" *and* "*suicide*" *are synonymous terms.* The words "self-destruction," "suicide," "take his own life," "commit suicide," and the other similar

terms used in policies of life insurance are synonymous, and mean the same thing.

This court has said in the case of Connecticut Mut. Life Ins. Co. *v.* Akens, 150 U. S. 468–475: —

> "It was argued that the word 'self-destruction' as here used was more comprehensive than suicide, and included an intentional, though insane killing of oneself. But the two words are treated as synonymous in the very clause in question as well as in the former opinions of this court. The act whether described by words of Saxon or Latin origin, or partly of the one and partly of the other, 'dying by his own hand,' 'self-killing,' 'self-slaughter,' 'suicide,' 'self-destruction,' without more cannot be imputed to a man who, by reason of insanity (as is commonly said) 'is not himself.'"

We may, therefore, not only on account of this decision, but also because the word "suicide" is used in the policy as meaning the same thing as "self-destruction," assume that the word in the policy, "self-destruction," and the word in the statute, "suicide," mean the same thing.

The Supreme Court of Missouri has so held.

Haynie *v.* Knights Templar, etc., 139 Mo. 431.

2. *There can be no suicide nor self-destruction without an intent.* Undoubtedly in construing this law the condition of affairs which led to its enactment must be considered. It is a part of legal history that insurance companies, in order to restrict and limit their liability, among numerous other conditions and exceptions stipulated that they should not be liable where the person insured committed suicide. In considering this defense the courts, beginning with the case of

Breasted *v.* Farmers &c. Co., 4th Hill, 73–75,

which was afterwards cited and approved by this court in the case of Manhattan Life Ins. Co. *v.* Broughton, 109 U. S. 121, held that a man could not commit suicide if insane, the act of suicide being predicated on an intent. The court said in the latter case :—

> "If a man's reason is so clouded or disturbed by insanity as to prevent his understanding the real nature of his act, as regards either its physical consequences or its moral aspect, the case appears to us to come within the forceful words uttered by the late Mr. Justice Nelson, when Chief Justice of New York, in the earliest American case upon the subject: 'Speaking legally also (and the policy should be subjected to this test), self-destruction by a fellow-being bereft of reason can with no more propriety be ascribed to his own hand than to the deadly instrument that may have been used for the purpose, and whether it was by drowning, poisoning or hanging, or in any other manner, was no more his act in the sense of the law, than if he had been impelled by irresistible physical power.' Breasted *v.* Farmers &c. Co., 4 Hill, 73–75."

Then the insurance companies, to avoid the effect of these decisions, inserted in their policies the provision that they should be void in case of "suicide, sane or insane, voluntary or involuntary," an absurd expression contradictory in terms. This clause was held to be effectual and to relieve the companies in all cases of suicide where the insured had the intent to take his own life even though such intention was that of an insane person, although this court has pointed out possible circumstances under which such a clause would be held of no effect.

In the case of Bigelow *v.* Insurance Co., 93 U. S. 284, this court cited with approval the case of Pierce *v.* Travelers Ins. Co., 34 Wis. 389, in which, in a case where the words of the policy provided that it should be void if the

insured "should die by suicide, felonious or otherwise, sane or insane," the court said: —

> "The condition here relieves the company from liability only when the self-destruction was intentional, or committed by a party who was conscious of the nature of the act he was committing, or about to commit, and conscious of its direct and immediate consequences, though the act may have been unaccompanied by any criminal, or felonious intent or purpose. *It does not apply or relieve the company, where the death of the assured was accidental, or may be properly be said to have been caused by accident, though brought about, it may be, by his own hands, or by some dangerous or destructive instrument held in them.*"

In one of the early Missouri cases the same view was taken.

Adkins *v.* Columbia Life Ins. Co., 70 Mo. 27–32.

3. *The intent of the statute was to prohibit the defense of suicide unless suicide was contemplated when the policy was taken out.* The meaning of the suicide statute might be aptly expressed as follows: "The defense of suicide or self-destruction in this State, as to policies hereafter issued, shall not be permitted, unless the insured intended at the time the policy was issued to take his own life, and any stipulation in the policy to the contrary shall be void."

In the first case decided after this statute went into effect,

Keller *v.* Travelers Ins. Co., 58 Mo. App. 557,

the court said: —

> "The plain purpose of the statute *supra* was to prevent the insertion in policies of life insurance of exceptions to liability on the ground of the suicide of

the insured, unless it could be proven 'that the insured contemplated suicide at the time he made the application for the policy.' This was in effect a legislative declaration of the public policy of this State. That it was intended to limit the power to contract for a lesser liability in cases of death by suicide, not within the limitation expressed in the statute, is also apparent from its terms, to wit: 'and any stipulation to the contrary shall be void.'"

And the Supreme Court of Missouri refers to the statute as meaning what we have said. In the case of

McDonald *v.* Life Assn., 154 Mo. 627,

the court said:—

"Measured by these rules this company, so far as the face of the contract shows, is not an assessment company, and hence Sec. 5855, Revised Statutes 1889, applies, and as the defendant has not attempted to show, as that section requires, when the defense of suicide is interposed, that the insured contemplated suicide when he applied for insurance, there has been no valid defense pleaded."

And again the court says:—

Logan *v.* Fidelity &c. Co., 146 Mo. 114–123.

"This section was not designed to limit the persons of a particular class of companies, as such by name, but its terms established a general rule, applicable to any company whose contracts insure against death, and which attempts to avoid liability in case of suicide, except those companies doing business on the assessment plan that were expressly exempted by reason of the provisions of section 5869 Revised Statutes 1889, of the Act authorizing such companies to be organized and prosecute business in this State,

and the force of that provision in favor of the assessment companies has been stricken down by an act of the legislature in 1897, so that the *defense of suicide* is now alike unavailing, etc. * * * If one holds *a general life policy* and an accident policy and is killed by lightning or *commits suicide*, so that he may be said to have died by accidental means, both the companies should pay and the stipulation against liability in the *event of suicide* in the policies should be no more a defense, etc."

We may also refer to the cases

Christian *v.* Conn. Mut. L. Ins. Co., 143 Mo. 460–466; and

Ins. Co. *v.* Florida, 32 U. S. App. 753.

In this connection we may well refer to the words of Judge Campbell in the case of

John Hancock Life Ins. Co. *v.* Moore, 34 Mich. 42,

where he says: —

"Some stress is laid on the term, suicide, as if it means a wrongful act of self-murder. It has no such restricted meaning. It means self-killing just as homicide means killing any one else. But there may be excusable homicide as well as felonious, and suicide was only cognizable at law when the person was *felo de se*, or guilty of a felonious act. If *non compos mentis*, the actor in homicide, or suicide, commits no crime. * * * A construction which punishes a person who is not in fault is not to be favored if it can be allowed at all. The very object of life insurance is to provide for death by disease or in the ordinary course of nature. Death by his own hands or in the case of one not *compos* is as much the result of disease as death by fever or consumption. The act of an insane man is morally no more his act than if it were mechanical."

The legislature must be presumed to have had in view the condition of affairs at the time the statute was enacted and to have intended the statute to make void the condition of the policies of life insurance companies, providing that such policies should be void in case the insured took his own life "sane or insane, voluntarily or involuntarily."

Otherwise some new word must be discovered to express the act of insane self-destruction, or an unconscious and unintentional self-destruction, for the courts use the old term in a general sense as referring to both kinds. If the words of the statute have the limited meaning contended for, the people and the newspapers, as well as learned courts and jurists, have all labored under a misapprehension.

4. *The words of the statute, "committed suicide" are used in their popular sense.* That this construction is right and that it is also true that in the popular sense any act by which a person takes his own life is referred to as "committing suicide," is shown, not only by the personal experience of every man, but it appears also that the word was so used even by counsel in this case. Throughout the brief presented by petitioner to the court on the trial of this case in the lower court, they referred to the act of Jarman as his "committing suicide." Afterwards they were more careful as to the terms used.

Thus on page 3 of the brief filed by counsel for petitioner in the trial court, the substance of the seventh paragraph of the agreed statement of facts, is stated as follows: —

> "John P. Jarman *committed suicide* on September 12th, 1898, while he was insane."

On page 5 of the same brief counsel says: —

"The contract of membership between John P. Jarman and the defendant company provided that in case of his *self-destruction, or suicide*,"

the defendant would pay only the assessments, etc.

And on page 6 of the same brief counsel says, in stating the points involved in the case: —

"Within the past five years the defendant company has had two cases litigated in Missouri upon policies *where the members committed suicide*. Both policies were issued *after* the passage of the assessment law of Missouri noted above. It was held that the proviso in section 5869 relieved the defendant company from the operation of section 5855 referring to *suicide*. This was in effect deciding that as to assessment companies section 5855 was repealed by the law of 1887. The question arises in this case, did such repeal relieve the defendant company from section 5855, referring to *suicide*, committed by a member whose policy was issued prior to the passage of the law of 1887? The contention of the defendant company is that after assessment companies were relieved of the operation of section 5855 by the law of 1887, which provided that such companies should not be subject to any provisions of the general insurance laws, except section 6013, referring to service of process, section 5855, being merely a declaration of the public policy of Missouri with reference to suicide, could not be invoked in any suit upon the policy of a member *who committed suicide* after this time and consequently, that the condition against *suicide* will defeat any recovery by the plaintiff, except the amount agreed to be paid in case of *suicide*, viz.: the amount paid in assessments by the member.

"If the contention of the defendant on the first point of law is maintained, the whole controversy will be settled, and the defendant will pay to the plaintiff all the money paid in assessments by the member; on the other hand, if it is held by the court that, as a matter of law, the *defense of suicide* cannot be pleaded

by the defendant, the question arises whether or not the beneficiary is entitled to recover with the face of the policy either all the money paid upon the policy in 'assessments' or all the money paid upon the policy in assessments during the first five years; in other words, whether or not the certificate, the constitution or by-laws, and the application, constituting the contract in question, are affected by the changes which have been made in the constitution."

On page 19 of the same brief counsel say: —

"In the Berry case (referring to the case, Knight Templars, etc., *v.* Berry, 4 U. S. App. 353; 50 Fed. Rep. 511), the suit was brought on a policy issued in 1885 by the same company to another resident of Trenton, Missouri, who also *committed suicide*."

The policy itself refers to "suicide" as equivalent to self-destruction, sane or insane, etc.

In spite of dictionary definitions and the power of logic, every one knows that in the public press, in the opinions of the courts and every-day life the term, "commit suicide," is used generally to express any act of self-destruction whether intentional or unintentional, whether felonious or the result of disease. If the contention of counsel for petitioner is right all the opinions in suicide cases must be revised and more accurate phraseology used, for the courts have all fallen into most lamentable error because they have spoken of the act in a common-sense way instead of with technical and logical accuracy.

The suicide question is an old one, and even in the time of Hamlet the grave-diggers realized its difficulties when discussing the act of Ophelia.

"*First Clo.* Is she to be buried in Christian burial that willfully seeks her own salvation?

Second Clo. I tell thee she is; and therefore make her grave straight: the crowner hath sat on her, and finds it Christian burial.

First Clo. How can that be unless she drowned herself in her own defense?

Second Clo. Why, 'tis found so.

First Clo. It must be 'se offendendo;' it cannot be else. For here lies the point: If I drown myself wittingly, it argues an act: and an act hath three branches; it is, to act, to do, and to perform: argal, she drowned herself wittingly.

Second Clo. Nay, but hear you, goodman delver, —

First Clo. Give me leave. Here lies the water; good: there stands the man: good: if the man go to this water, and drown himself, it is, will be, nill be, he goes, — mark you that; but if the water come to him and drown him, he drowns not himself: argal, he that is not guilty of his own death shortens not his own life.

Second Clo. But is this law?

First Clo. Ay, marry is't; crowner's quest law."

The subtleties of logic, as pictured by Shakespeare, as well as by Holmes, in "The One Hoss Shay," sometimes are most amazing and startling and lead to curious and unexpected conclusions.

5. *Any other construction of the statute would be absurd.* Any other construction of the statute would make it unmeaning. It has always been the law that the suicide of a sane person avoids the policy whether so stipulated therein or not.

Ritter *v.* Mutual Life Ins. Co., 169 U. S. 139.

As the opinion of the majority of the Court of Appeals in this case says: —

"It is said that by a long line of adjudications prior to the adoption of the Missouri Statute excluding the defense of suicide, it has been determined that the words 'commit suicide,' as used in insurance policies, meant a 'voluntary act when a person was in the possession of his ordinary reasoning faculties;' that the words 'commit suicide' are used in that sense in section 5855, and being so used that the statute is not broad enough to cover the present case because it is stipulated that Jarman took his own life 'while insane to such an extent as to be incapable of understanding the nature or consequences of his act.' A proper degree of respect for the legislature requires us to overrule this contention, since it is not probable that any legislative body in its right mind would declare that insurance companies shall not be allowed to make the defense of suicide if the insured takes his life when in the full possession of all his reasoning faculties, but may make it whenever it is claimed that he took his life while insane. In view of the many long and embarrassing trials that had taken place in actions upon insurance policies to determine the mental state of the deceased at the time he took his own life and the difficulty in many cases of determining that issue with any approach to accuracy, it was deemed best to exclude the defense of suicide altogether in such actions. The statute was doubtless prompted by that view and whether it be regarded as wise or unwise, it was competent for the Legislature to enact it and we have no doubt that the words commit suicide were used in a popular sense to comprehend the act of self-destruction without reference to the mental state of the actor."

III.

If the suicide statute entered into and formed a part of the contract, which it did, the subsequent adoption of the law of 1887, under which assessment companies were exempted from the operation of the insurance laws, did not affect Jarman's policy, because such law had no retrospective effect and did not in any way impair or repeal the statute, but simply created an exemption as to future contracts.

1. *The statute of 1887 had no retrospective operation because the State constitution forbade it.* When the company obtained permission to do business in Missouri on the assessment plan under the statute of 1887, its existing contracts were not affected, but it was authorized to insert the suicide clause in policies subsequently issued, because the statute had only prospective operation, and in no manner related to or affected policies already issued, because the suicide statute was a part of such policies, and the legislature had no intention of applying the new law to existing contracts and could not so apply it if it had wished.

The constitution of Missouri, article II, section 15, provides as follows: —

> "That no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation,"

can be passed by the General Assembly.

In the case of

Hope Mutual Life Ins. Co. *v.* Flynn, 38 Mo. 483,

the Supreme Court of Missouri, citing Sedgwick on Construction of Statutes, Sec. 188, said: —

> "A statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed, is to be deemed retrospective or retroactive."

The same court in another case says: —

Barton Co. *v.* Walser, 47 Mo. 189–201.

> "As between individuals the Legislature has no power to interfere and declare an act or deed valid which was previously void. Therefore, when the Legislature undertook by an enactment to declare a deed legal and binding which was made by an insane person, it was decided by this court that the act was unconstitutional and of no effect. Routsang *v.* Wolf, 35 Mo. 174."

2. *Statutes are construed to operate prospectively only, even in the absence of such a constitutional prohibition.* It is not necessary to more than refer to the general rule that statutes will always be construed to operate prospectively, unless the contrary intent is clear.

This court in the case of

City Railway Company *v.* Citizens Railway Company, 166 U. S. 557,

has said: —

> "But it (the act of the legislature), certainly should not be construed to act retrospectively or to

affect contracts entered into prior to its passage unless its language is so clear as to admit of no other construction."

Bearing directly on this question is the case of

Voight *v.* Kersten, 164 Ill. 344; 45 N. E. R. 543,

where the court says: —

"It would seem that the construction of the act passed in June, 1893, giving it the effect to destroy that right of appointing a beneficiary, or naming another beneficiary, which existed in favor of the deceased under his contract prior to the passage of the act, would be to give the act a retrospective effect, and destroy the obligation of the contract entered into between the deceased and the complainant. It is a recognized rule in the construction of statutes that they should be so construed as to give them a prospective operation only, and they should be allowed to operate retrospectively only where the legislative intention to give them such operation is clear and undoubted."

See, also, Moore *v.* Chicago, &c., Society 178 Ill. 102; 52 N. E. R. 882.

3. *The suicide statute of Missouri has never been repealed.*

In the case of

Knights Templars & Masons etc. *v.* Berry, 4 U. S. App. 353; 50 Fed. Rep. 511; 1 C. C. A. 56,

which is cited in the opinion of the court below, Judge Shiras said: —

"Before this question can arise it must be made clear that the Legislature of the State intended to repeal by the act of 1887, the provisions of section 5982 (now section 5855), in its application to policies previously issued by companies doing business under the assessment plan; and in our judgment, the intention to repeal the section in this particular is not made clear. In the first place, the Legislature of Missouri has not repealed section 5982 (now section 5855), it is still the law of the State that companies engaged in the business of life insurance shall not be permitted to exempt themselves from liability for death by suicide not contemplated when the application for its insurance is made."

Moreover, the authorities clearly establish the fact that the suicide statute became a constituent part of the contract which it was beyond the power of the Legislature to alter or amend. The statute of 1887 was only an exempting statute, conferring upon the companies the right to avail themselves of certain privileges as to future contracts and in no way operated to repeal the former statute.

4. *The cases cited by counsel for petitioner have no application.* However, in this case it is not necessary to consider the intent of the exemption of the statute of 1887, because under the statute of Missouri it could not have a retrospective effect, because if it did, it would be unconstitutional.

Certain cases are cited in petitioner's brief where it has been held that statutes which have been passed validating certain contracts, or acts made or done in the past, which but for the curative effects of the statute would be void, are valid but that rule under the decisions of the Supreme Court of Missouri cannot govern here.

The case of

Satterlee *v.* Matthewson, 2 Peters, 380,

where the court said that all would admit the retrospective character of a statute if the effect was to create a contract where none had previously existed, supports our contention. For, if the suicide clause in the policy was void, and the effect of the statute of 1887 was to validate it, it would be injecting into the contract a provision which did not before exist, which it was held could not be done.

All the cases cited in support of the proposition that the effect of the law of 1887 was to revive the original contract, do not apply, because such law could not be retrospective, and moreover, there was never any repeal of the original suicide statute, which remains to-day a part of the laws of the State.

It is contended that the suicide statute applies only to the remedy, and is not a part of the contract, and that the statute of 1887, authorizing the business of assessment insurance, and exempting assessment insurance companies from the general insurance laws of the State, operated as a repeal of the suicide statute so far as these companies were concerned, thus, bringing the case under the principles of Ewell *v.* Daggs, 108 U. S. 142.

In the first place, the act of 1887, as we have shown, created an exemption as to future contracts, but did not in any way repeal the original law, taking away the defense of suicide, but left it in full force.

The facts in the case of Ewell *v.* Daggs were different. There the statute provided that if the contract reserved an unlawful interest, it should be void as to the interest and that whole law was wiped out by the new constitution.

As was said in the opinion of the court below: —

> "In Ewell *v.* Daggs a purely statutory defense existing under the usury laws of a State when a certain contract for the loan of money was entered into, was taken away by a subsequent constitutional amendment,

and it was held in substance, that such repeal did not impair the obligation of the contract. The court in that case regarded the usury law that had been repealed as in the nature of a penal statute inflicting a penalty upon the lender which any subsequent legislature could repeal and thereby remit the penalty."

The defense of suicide in this case is made under the terms of a clause of the contract, which, if void under the statute at the time it was made, was void for all time, and could not be revived or given life, even if the suicide statute was in fact afterwards repealed, which it was not.

Counsel for petitioner must concede that, under the constitution of Missouri, any law having a retrospective effect is invalid. Counsel must also concede that, under the definition of the Supreme Court of Missouri as to what a retrospective law is, to give any such effect to the statute of 1887, as is claimed, would be to give the law a retrospective effect, and counsel must certainly concede that the original suicide statute of Missouri remains, and has always remained since its first enactment, in full force.

The argument of counsel is based on the idea that the law of 1887 operated as a repeal of the former statute, which it did not. Therefore, we contend that the principles of Eweil *v.* Daggs do not apply to the facts in this case, and the law of 1887 had no effect upon this contract.

Counsel also cited the case of Rosenplanter *v.* Provident Savings Life Society, 96 Fed. Rep. 721, decided by the Circuit Court of Appeals for the Sixth Circuit.

In that case the defendant was a company issuing term insurance, which was only from year to year, and which expired by its terms at the end of the agreed period unless renewed, and it must be renewed every year in order to be valid. It follows that it was doubtful whether the law of New York in regard to giving notice of premiums applied to the contract, and if it did it did not apply to the con-

tract after the law was repealed so far as renewals and premiums which matured after the law in regard to notice had been repealed were concerned; hence we claim that the facts of that case were in no respect like those of this, and that the same principles are not involved in this case that were involved in that.

Of course as to policies subsequently issued by assessment companies after the law of 1887, there would be an exemption from the suicide law, because that was the intent of the statute, and it has been so expressly decided in,

Haynie *v.* Knights Templars & Masons Life Indemnity Co., 139 Mo. 416.

IV.

The exemption created by the law of 1887 was revoked by the act of 1897 which was regularly and constitutionally enacted.

In 1897, by an act of the Legislature, the law exempting insurance companies doing business on the assessment plan from certain provisions of the laws of the State of Missouri relating to defenses in actions in insurance policies was repealed, and such law went into effect before the death of Jarman. While we believe that it is immaterial whether the repealing act of 1897 was constitutionally passed or not, because Jarman's contract was made before the exempting statute was enacted, we contend that the act of 1897 was in all respects valid, and has always been so considered by the courts of Missouri and now forms a part of the Revised Statutes of Missouri of 1899.

1. *The title of the act of 1897 fully expresses its object*

The act of 1897 purported to repeal section 5869 of the Revised Statutes of 1889, and to adopt a new section in lieu thereof.

The only point made by counsel for petitioner is that the act of 1897 is unconstitutional because it does not conform with the requirements of the constitution of Missouri that "No bill shall * * * contain more than one subject, which shall be clearly expressed in its title."

The object of this provision is to prevent "log-rolling," and surprise and fraud on members.

State *v.* Miller, 45 Mo. 495–498.

> "The courts in all the States where a like or similar provision exists, have given it a very liberal interpretation, and have endeavored to construe it so as not to limit or cripple legislative enactments any further than what was necessary by the absolute requirements of the law. * * * It is sufficient that the title fairly embraces the subject-matter covered by the acts; mere matters of detail need not be stated in the title." State ex rel. Wolf *v.* Bronson, 115 Mo. 271, 276.
>
> "A mere reference to the section to be amended, without other description of the subject-matter of the amendatory law, is, under the ruling of this court, a sufficient title to an act which deals exclusively with the subject of the section amended." State ex rel. *v.* Heege, 135 Mo. 112, 118.

In the statement of the title of session acts 1897, 129, we find the following, *inter alia*, "An Act to repeal Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, entitled, etc."

Upon analysis it is disclosed that R. S. 1889, section 5869, deals with four, and only four, sub-topics relating to the law of insurance. What are they?

First, annual statement.

Second, visitation and examination by the superintendent of the insurance department.

Third, a statement of the law to which "such foreign companies" are subject and required to conform.

Fourth, a provision in regard to the relation of such companies to the general insurance laws of the State.

By no course of reasoning can we arrive at the conclusion that the amendatory section deals with any other than these four subjects. True, the amendatory section in making the statement of the law to which foreign companies are subject and required to conform, does not refer to the section of the statute to which the old section refers, and it refers to other sections, but, as we have already seen, "mere matters of detail need not be stated in the title."

State ex rel. *v.* Bronson, 115 Mo. 271, 276.

The only difference between the old section and the amendatory act, is in regard to the law to which "such foreign companies" are subject.

It will be readily seen that if the title must so minutely enter into details as to enumerate these differences, the declaratory clause of a statute would be only a repetition of the title. Since the amendatory act ('97–129) deals exclusively with the subject of the section amended, and makes specific reference to the section amended, the subject of the amendatory act is clearly expressed in its title.

> "The practice of legislation by reference to sections of the authorized version of the statutes (without other description of the subject of the amending act) has been followed quite generally in this State on the faith of early rulings of the Supreme Court approv-

ing such methods of law-making. So much has been done, and so many rights have been acquired, on the basis of those rulings, that we hold that the question of their correctness ought not to be re-opened at this day. We adhere to them and follow them as an expression of the settled law of Missouri."
The State ex rel. *v.* County Court, 128 Mo. 440.

2. *The Supreme Court of Missouri has held the act in question valid.* In the case of Toomey *v.* Supreme Lodge Knights of Pythias, 147 Mo. 129–137, the Supreme Court of Missouri sitting in banc, by an unanimous opinion, referring to the section of the statute in question and also to the law of 1897, said: —

"As to the first class, regular or old line (companies), Section 5855, Art. 2, Chap. 89, R. S. 1889, provided: 'In all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void.'

This provision, it has been held, applies only to the first class above specified and does not apply to the second class, assessment companies (Haynie *v.* Knight Templars & Masons' Life Indemnity Co., 139 Mo. 416) because they are organized under Art. 3, Chap. 89, R. S. 1889, and it does not apply to the third class fraternal beneficial associations — because by section 2823, Art. 10, Chap. 42, R. S. 1889, it is provided that, 'such fraternal beneficial societies shall not in any way be subject to the insurance laws of the State.'

Whether this discrepancy was designed, or was an oversight by the General Assembly, it is not the province of the courts to say, but it appears it was a mis-

take *for in 1897, the legislature extended the law to all classes of insurance* (Acts 1897, p. 129)."

The court also took the same view in Logan *v.* Fidelity, etc., Co., 146 Mo. 114.

V.

Under the definition of suicide and the principles laid down in the leading cases, it cannot be held under the seventh paragraph of the agreed statement of facts (Trans., p. 6), that John P. Jarman committed suicide, or was guilty of self-destruction, because he had no intent to take his own life nor did he know that his act would cause death, but his death was the result of disease.

Suicide is an affirmative defense and the burden of proof is on the defendant to show it. Unless it clearly appears from the agreed statement of facts that Jarman was guilty of self-destruction then the death does not come within the exceptions of the policy.

1. *Jarman had no intent to take his own life, nor did he know what he was doing.* The gist of the defense of suicide or self-destruction is the intent, and if there was no intent, Jarman did not in a legal sense take his own life.

Leman *v.* Manhattan Life Insurance Co., 46 La. Ann. 1189; 15 So. R. 388;

Conn. Mut. Life Ins. Co. *v.* McWhirter, 44 U. S. App. 492; 73 Fed. Rep. 444–450;

Travelers Life Ins. Co. *v.* Nitterhouse, 11 Ind. App. 155; 38 N. E. R. 1110;

Hale *v.* Life, etc., Indemnity Co., 61 Minn. 516; 63 N. W. R. 1108;
Edwards *v.* Travelers Ins. Co., 20 Fed. Rep. 661.

The agreed statement of facts, section 7, is: —

> "John P. Jarman, while insane to such an extent as to be *incapable of understanding the nature or the consequences of his act*, took his own life, and came to his death on the 12th day of September, 1898, by a gun-shot wound inflicted by himself. It is not contended, however, by plaintiff that said self-destruction was the result of accident."

The language of the policy is (Trans., p. 14): —

> "Or in case of the *self-destruction* of the holder of this policy, whether voluntary or involuntary, sane or insane, * * * then in each and every of the foregoing cases, this policy shall become null and void, and the widow and heirs or devisee of said member shall have no claim for benefits on this company, provided that in case of the *suicide* of the holder of this policy, then this company will pay to his widow or heirs or devisees such an amount on this policy as the member shall have paid to this company on on this policy in assessments on the same without interest."

Now, if the word "self-destruction," is equivalent to the word "suicide," and it must have been used in that sense, because the next clause is the proviso that in case of the "*suicide*" of the holder of the policy the company will only pay the beneficiary named in the policy the amount paid by the policy-holder in assessments, the construction of the clause in question must be that in case the member shall "*commit suicide*," voluntary or involuntary,

sane or insane, his beneficiary shall only be entitled to the amount paid in assessments. There can be no such thing in law as insane, or involuntary suicide, because, under the authorities cited by petitioner, suicide implies an intent, and courts have often commented on this absurd contradiction in terms.

Haynie *v.* Knights Templars &c., 139 Mo. 416–432;
Adkins *v.* Columbia Life Ins. Co., 70 Mo. 27–32.

2. *Jarman died from disease.* True, the language of the seventh paragraph of the agreed statement of facts is contradictory. The counsel who prepared the case on the part of petitioner, knowing that the first sentence of the seventh paragraph would effectually eliminate the question of suicide from the case, inserted the second clause to the effect that it was not contended that the said self-destruction was the result of accident. If a man while delirious from typhoid fever throws himself from a window and is killed, it cannot be said to be an accident, nor on the other hand is it suicide, but it is the result of disease.

Suppose Jarman had undertaken an ocean voyage in an unseaworthy vessel which would and did founder in a storm, it would not be strictly an accident, nor would it be suicide. If Jarman while out walking on a dark night had come in contact with a live electric wire and was killed, or if in absolute darkness leaned against the railing of a high bridge, and it gave way and he was precipitated to the rocks below and was killed, it would not be suicide. How is it suicide, or self-destruction, voluntary or involuntary if Jarman when insane to such an extent that he could not understand the *nature* or *consequences* of his act, or form an intent to take his own life even though the intent of a disordered mind, did die because of a pistol shot

inflicted by himself? It was no more a case of self-destruction than would be that of a child who exposes itself to the inclemency of the weather, catches cold and dies of pneumonia. Or if a man in public or business life overworks and keeps late hours so that he has nervous prostration or Bright's disease from which he dies as the direct result of his own imprudence, or an inveterate smoker who contracts heart disease as the result of his own act in the excessive use of tobacco, and should die of it, could be said to be guilty of self-destruction.

Upon reason and authority we contend that the death of Jarman was not caused by any act of self-destruction, voluntary or involuntary, sane or insane, not even strictly speaking was it by accident, but his death was the consequence of disease which caused such an impairment of the faculties that he died as a direct result of the disease, as much as a typhoid fever patient who, in delirium, perhaps to escape an imaginary enemy, plunges from a window and is killed, dies from disease.

3. *Under the authorities Jarman's act could not have been suicide.*

We have already referred to the case of

Bigelow *v.* Insurance Co., 93 U. S. 284,

and, in addition to the extracts heretofore given, it seems that the following words of the court have a peculiar significance under the facts of this case. In this case (93 U. S. 284–287) the court said: —

> "In the popular, as well as the legal sense, suicide means, as we have seen, the death of a party by his

own voluntary act; and this condition based, as it is, on the construction of this language, informed the holder of the policy, that, if he purposely destroyed his own life, the company would be relieved from liability. It is unnecessary to discuss the various phases of insanity, in order to determine whether a state of circumstances might not possibly arise which would defeat the condition. It will be time to decide that question when such a case is presented. For the purposes of this suit, it is enough to say that the policy was rendered void, *if the insured was conscious of the physical nature of his act, and intended by it to cause his death, although, at the time, he was incapable of judging between right and wrong, and of understanding the moral consequences of what he was doing.*"

To this effect is John Hancock Life Ins. Co. *v.* Moore, 34 Mich. 42.

In this case there is no conflicting evidence so as to leave the true facts in doubt, but it is admitted that the death of Jarman was caused by a gunshot wound, *inflicted by himself while insane to such an extent as to be incapable of understanding the nature and consequences of his act.*

This is a very different situation from that revealed by the facts in the case of Bigelow *v.* Insurance Co., and we take it, presents a state of circumstances such as is referred to by the court in that case. There the court suggests that there might a state of circumstances arise which would defeat the condition of suicide, sane or insane, but, referring to Bigelow's act, the court said: —

"Bigelow knew that he was taking his own life and showed sufficient intelligence to employ a loaded pistol to accomplish his purpose; but he was unconscious of the great crime he was committing. His darkened mind did not enable him to see and appreciate the moral character of his act, but still left him capable enough to understand its physical nature and consequences."

In this case it is conceded that Jarman *did not know* either the nature, moral or physical, or the consequences, moral or physical, of what he was doing. Therefore it follows that the condition of the policy in regard to self-destruction, voluntary or involuntary, sane or insane, does not apply.

It must be remembered, as is conceded in all the cases involving questions of life insurance, that the words of an insurance policy are to be strictly construed against the insurer and liberally construed in favor of the insured.

It is an absurd expression to speak of involuntary suicide. As well might we refer to involuntary theft or murder. If a somnambulist should while asleep shoot a man it would not be homicide, nor, if, while dreaming that he was attacked by robbers, he should reach for a pistol to defend himself, and kill himself in that way, would it be involuntary suicide?

We repeat, therefore, that the act of Jarman, under the agreed statement of facts, shows that his death was the result of disease, and did not come within the suicide condition of the policy.

2. *The authorities support this view.*

In the case of

> Blackstone *v.* Standard Life & Accident Ins. Co., 74 Mich. 592; 42 N. W. R. 156,

the court says in conclusion,

> "We think where one is so far beside himself, his intellect so darkened and obscured that he may be neither morally or legally responsible for his own acts and conduct, and in such condition produces his own death, it cannot be any more said to be his act than though

the act had been committed by another, or the insured had placed himself upon some dangerous height and fallen involuntarily and been dashed to pieces."

It is also held that it is not suicide if the insured did not have the intent to do the act or realize the physical consequences of his act.

Pierce *v.* Travelers Ins. Co., 34 Wis. 389.

To the same effect is the recent case of

Grand Lodge *v.* Wieting, 168 Ill. 408; 48 N. E. R .59,

where the court says: —

"It is believed there is a substantial concurrence of judicial decision in America on the proposition that if, at the time of the suicidal act, the assured was so affected with insanity as to be unconscious of the act or of the physical effect thereof, or was driven to its commission by an insane impulse, which he had not the power to resist, the act of self-destruction is regarded *as though it was the result of accident or of some irresistible external force*, and the proviso of a policy framed as the one at bar, or where other phrases denoting self-destruction are used, will not attach, but the insurer will be held liable. There is much conflict of opinion and authority as to the effect of the condition or proviso of the policy when insanity has so far overcome the consciousness of the assured that he was unable to appreciate the moral wrong involved in the act of taking his own life, though he had mind enough to intend the act, and was aware of its physical effect."

To the same effect are

Esterbrook *v.* Insurance Co., 54 Maine, 224;
Streeter *v.* Society, 65 Mich. 199; 31 N. W. R. 779.

VI.

The amendment to the by-laws, or constitution of the company cutting off the payment in addition to the face amount of the policy, of the assessments, which had been paid by the insured, was not retrospective and did not affect Jarman's policy.

The agreement of the member to abide by the constitution, "as it now is or may be constitutionally changed hereafter," does not enable the association to bind him by subsequent changes of the constitution reducing the amount stipulated to be paid under the policy.

1. *The contract is not made by the by-laws, but by the policy.* This contract is *not* made up of the charter, constitution and by-laws of the company, because the agreement is to pay a fixed amount and under the eighth paragraph of the policy it is agreed that only the constitution or by-laws, printed on the back of the policy, shall form a part of it. *The claim does not arise under the by-laws, but under the policy.*

Under section 1 of article 4 of this constitution, which was never changed, it was provided, that when a member was accepted a *policy* should be issued to him, stating the terms and conditions of the contract and which, the law says, "*shall constitute the basis of settlement with the beneficiaries.*"

We contend, therefore, that, under the provisions of the constitution and the by-laws themselves, both as originally existing and also as amended (for it must be admitted that the contract is to be strictly construed against the company), the *policy* as issued was to fix the amount to be paid.

2. *The contract is one of life insurance and cannot be modified except by the consent of both parties.* The contract in question is one of life insurance and the contract sued on is a policy. The nature of this company was clearly established by the opinion of Judge Caldwell in the case of Berry *v.* Knight Templars, etc., 46 Fed. Rep. 439; where this organization was held to be a regular life insurance company and its contracts ordinary life insurance policies.

Commonwealth *v.* Wetherbee, 105 Mass. 149;
National Union *v.* Marlow, 4 U. S. App. 95; 74 Fed. Rep. 775.

If this be true the contract cannot be modified by one contracting party without the consent of the other.

It must be remembered that what is here called the constitution is not the charter, but is simply a code of by-laws under an inappropriate name.

Supreme Lodge *v.* Knight, 117 Ind. 489; 20 N. E. R. 483;
Mulroy *v.* Knights of Honor, 28 Mo. App. 463.

Because the by-laws at the time of the issue of the policy provided that the *policy* should constitute the *basis of settlement* with beneficiaries, the *policy* itself must determine the amount to be recovered.

3. *The amendments to the by-laws did not affect this policy because they do not purport to have any retrospective operation.* The amendments to the by-laws did not in any way affect this contract, *nor did they purport to do so.* The new by-laws, as well as the old, declare that *the policy* shall determine the rights of the beneficiaries, and under

all rules of construction the proposed amendments only apply to contracts thereafter made.

The promise in the policy (Trans., p. 14) is to pay on Jarman's death

> "the sum of $5,000 and all the money paid on the policy in assessments subject to the limitation as to the amount of such payment as is provided in Sec. 1 of Art. 7 of the constitution on the back of this policy."

Sec. 1 of Art. 7 above referred to simply provides (Trans., p. 29): —

> "Sec. 1. Upon due notice and satisfactory proof of the death of a member of this company the board of directors shall within sixty days pay the widow, children or heirs of the deceased member (in the order named unless otherwise ordered by the member during his lifetime, or in his will) the amount set forth in the deceased member's policy of membership.
>
> Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment, provided it shall not exceed $5,000, and all the money paid on the policy in assessments. And a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates."

The last amendment of February 20th, 1894, was by striking out all of the proviso. This then left the law as amended to only consist of the first paragraph, that upon due notice and proofs of death the company should pay the beneficiaries in the policy "the amount set forth in the deceased member's policy of membership."

Certainly there is nothing here to indicate in the least any intent on the part of the company to affect the policy The direction is that the directors shall pay to the insured the amount specified in the policy, and it was and is agreed under section 1 of art. 4 of the constitution (Trans., p. 24), that the policy

> "Shall constitute the basis of settlement with the beneficiaries."

We contend, therefore, that under the provisions of the constitution and the by-laws themselves, both as originally existing and also as amended, the policy as issued must fix the amount to be paid.

It is only necessary upon this point to cite a few authorities.

In the case of

Carnes *v.* Iowa Traveling Men's Association, 106 Iowa, 281: 76 N. W. R. 683,

the court said: —

> "Nothing in it (the constitution) authorized the association to amend, and thereby bind a member to any change in the contract without his assent, nor do the amended articles purport to change existing contracts or to authorize any such change by the adoption of by-laws. In the absence of such provisions, the articles and by-laws as amended cannot be treated as retrospective in their operation. Mere silence as to the effect of revision and amendment of the constitution and by-laws will not warrant the inference that any change wrought will limit or extend the obligation heretofore created by the issuance of certificates of membership. Statutes are construed so as to give them a prospective operation, unless the intention that

they operate retrospectively is clear and undoubted, and it is not perceived why the same canon of construction should not be applied to the rules adopted by a mutual insurance association for the transaction of its business and the government of its members."

The same principle is laid down in

Spencer *v.* Grand Lodge, 22 Misc. 147; 48 N. Y. Supp. 590; affirmed 65 N. Y. Supp. 1146;
Grand Lodge, etc., *v.* Stumpf, 24 Tex. Civ. App. 309; 58 S. W. R. 840;
Hobbs *v.* Association, 82 Iowa, 107; 47 N. W. R. 983;
Sieverts *v.* Association, 95 Iowa, 710; 64 N. W. R. 671;
Benton *v.* Brotherhood, 146 Ill. 590; 34 N. E. R. 939.

5. *The company had no power to alter the contract by amendments to its constitution or by-laws.* Even if we concede that the company did intend by the amendments to reduce the amount paid on existing policies, it had no power to make any such change and the amendments, so far as existing policies are concerned, are inoperative, unreasonable and void.

In Hobbs *v.* Iowa Benefit Association, 82 Iowa, 107; 47 N. W. R. 983, the court said: —

"The corporation has no capacity, as a legislative power from which it derived existence has no competency, by-laws of its own enactment to disturb or divest rights which had created, or to impair the obligation of its contracts, or to change its responsibilities to its members, or to draw them into new and distinct relations."

In the recent case of Pokrefky *v.* Detroit &c. Assn., 121 Mich. 456; 80 N. W. R. 240, the Supreme Court of Michigan said: —

> "The by-laws as they existed at the time he became a member constituted a part of the contract. If the trustees had the power to limit the amount of payment to be made at $1,500, they could limit it to a much lesser amount. The act under which the company was organized permitted the trustees to change the by-laws at pleasure; but it cannot be said that this was intended to place it within the power of the trustees to adopt by-laws that would have a retrospective operation upon the contracts of the company made before new by-laws were adopted. While the trustees undoubtedly had the power to pass or change by-laws necessary for the well government of the affairs of the company, it cannot be said that it was intended to clothe them with the arbitrary power to reduce the amount due beneficiaries under contracts made before new by-laws were passed. The same question was presented in Insurance Co. *v.* Connor, 17 Pa. St. 136, and it was there held that the by-laws could have no retrospective effect."

In the case of Voight *v.* Kersten, 164 Ill. 314; 45 N. E. R. 543, the Supreme Court of Illinois held that the right to designate a beneficiary which was unlimited at the time the certificate was issued, could not be taken away by a subsequent act of the legislature. If the legislature could not take away the right to designate a beneficiary, much less can the directors of this company take away part of the amount promised its policy holders.

In the case of Startling *v.* Supreme Council, 108 Mich. 140; 66 N. W. R. 340, above cited, the court says: —

> "It is claimed by way of defense that in 1890, and before this suit was brought, the causes of total dis-

ability were reduced to three: (1) Entire and incurable loss of vision; (2) entire loss of both arms, or both legs; (3) hopeless and incurable insanity; and that, inasmuch as the plaintiff had agreed to observe the rules and regulations of the order, this change of causes of total disability would prevent his recovery for the total disability growing out of the paralysis. It has been held that where a mutual benefit society issued to a member a certificate of insurance, the subsequent adoption of a by-law by the society could not modify or change the contract of insurance without the express consent of the member. Grand Lodge *v.* Sater, 44 Mo. App. 445; Insurance Co. *v.* Conner, 17 Pa. St. 163; Becker *v.* Society, 144 Pa. St. 232; 22 Atl. 699; Morrison *v.* Insurance Co., 59 Wis. 162; 18 N. W. R. 13."

In the case of Hale *v.* Equitable Aid Union, 168 Pa. 377; 31 Atl. 1066, the court says in a case much like the one at bar: —

"The benefit certificate was accepted by plaintiff subject to the right of the corporation to amend its by-laws, and to change the contract in so far as the by-laws make it, but not in so far as the contract is made by the certificate itself."

In an action on a similar certificate in New York, the Supreme Court of that State says (Weiler *v.* Equitable Aid Union, 36 N. Y. Supp. 734; 92 Hun, 277): —

"Here the object and purpose of the corporation, as appears from the finding of fact, were, among other things, to do a life insurance business upon the assessment plan, and give certificates payable in manner and form as that given to plaintiff. The by-law in question strikes down these certificates, and to that extent changes the object and purposes of the corporation. The right of plaintiff to payment upon the contingency

named in the certificate was in the nature of a vested right. Goodman *v.* Lodge, 67 Md. 117, 127; 9 Atl. 13, and 13 Atl. 627; Bac. on Ben. Soc. 289; 1 Moore Priv. Corp. 496. The plaintiff had the right to believe that the defendant would not, by by-laws, assume to change, as to him, the objects and purposes of the corporation upon the basis of which he had made his contract and for ten years and upwards had performed upon his part. As to plaintiff, the new by-law was simply repudiation of a positive contract."

The leading case in Missouri is that of Hysinger *v.* Supreme Lodge, etc., 42 Mo. App. 635; in which case the rule is laid down by the court, as contained in an extract from Niblack on Benefit Societies, as follows: —

"But when the provision of the charter or a by-law of the society constitutes a part of the contract of insurance, its alteration without the consent of the member cannot affect the contract."

In support of this doctrine the court cites a number of authorities, including Morrison *v.* Wisconsin, etc., Co., 59 Wis. 162, a case exactly in point, which it is not necessary to more than refer to here.

In Grand Lodge *v.* Sater, 46 Mo. App. 452, the court has said: —

"As to other amendments of the constitution and by-laws, Sater was bound, but not so as to changes directly affecting his contract of insurance. An insurance contract such as we have here is as sacred as any other contract, and it cannot be modified or changed by the society except by the express consent of the member."

In Smith *v.* Supreme Lodge, Knights of Pythias, 83 Mo. App. 512–526, the court says: —

"The fact that it (the association), reserved the right, by the assent of the member, to make future laws obligatory upon him, could not justly be deemed to comprehend the right to abate its debt, for that would *pro tanto* destroy the contract between the parties and to permit one person to accept the consideration of a debt and subsequently to deny a material part or all of such debt, would authorize a patent fraud, which the law does not deem to have been within the intent of a mere general agreement for changes in the contract. Such an agreement only contemplates those changes which fairly consist with the full obligation entered into. It does not imply that the obligation itself should be lessened or destroyed at the will or caprice of the obligor, for that would involve injustice to one and ill design on the part of the other of two parties to a contract. The law does not seek to compass an injury; neither does it impute an intent to defraud in advance of proof. In associations like the present, which are professedly formed to provide a sum certain to a designated recipient, the parties are not to be understood as intending by an agreement on the part of the assured to obey future laws, that the indemnity specified shall be materially impaired or destroyed, after full consideration paid, under the operation of a subsequent by-law, which, like the one under review, provides for a forfeiture of material rights upon an event which the member, according to this record, could not avoid — death by self-destruction when insane. Of course, such a clause, if it had been inserted in the original contract, might have been available in some jurisdictions, not to defendant, however, in contracts made in this State. Toomey *v.* Supreme Lodge K. of P., 147 Mo. 129; same case, 74 Mo. App. 507. That would present a very different question from the one before us. What we have to deal with is, not the enforceability of such a clause if embraced in the original agreement between the parties (as in the Toomey case, *supra*), but its injection into their contract per force of an agreement to abide by further by-laws.

> If it is thus read into the contract between the parties it necessarily affects its substance and the intent of the right to recover thereon, and is therefore a material alteration of an agreement fairly entered into and upon a full consideration. We cannot infer that this was the result had in view when the contract was made as shown in this record, nor do we think it would be a reasonable exercise for the right reserved to the order to make by-laws for the future governance of its members, to enact one which in effect took away about one-half of the sum it had agreed to pay him, after having received the consideration for the indemnity for 18 years."

A number of cases have been lately decided, involving the right of a society to make arbitrary changes in its by-laws, one of which is

> Langan *v.* American Legion of Honor, 34 Misc. R. 629; 70 New York Supp. 663,

in which the court says: —

> "The agreement by the plaintiff in the application for membership and in the benefit certificate, to comply with all the laws that might thereafter be adopted, as well as the power reserved in the by-laws to change them, had reference to changes which should not impair the substance of the contract. Nothing beyond this will be implied on the theory that it is reasonable. The amended by-law of 1900 abrogates the contract to pay $5,000 and substitutes an obligation to pay only $2,000, and is therefore void. Some opinions of Judges seem to say (strangely enough, as it would seem) that a by-law changing the contract, where no such power was reserved, is unreasonable and therefore void. I do not understand it to be a question of reasonableness at all, but of power. If the power sought to be exercised to change the contract was not reserved, its exercise cannot be called reasonable."

And the Supreme Court of Massachusetts, in a case involving the same facts and against the same defendant, has recently said: —

Newhall *v.* Supreme Council American Legion of Honor, 63 N. E. Rep. 1,

> "But the plaintiff's rights do not stand upon the by-laws alone. They stand also upon express contract. The promise to pay five thousand dollars is conditioned by the by-laws only to the extent that has been stated. Even if the 'full compliance with all the by-laws,' which is mentioned as a consideration for the promise, is not interpreted and limited by the more specific provisions of the express conditions, 'compliance' in this connection means doing what the by-laws may require the member to do, not submission to seeing his only inducement to do it destroyed. The case is not like Daley *v.* Association, 172 Mass. 533, 52 N. E. 1090, and Moore *v.* Association, 103 Iowa, 424, 72 N. W. 645, where the promise to pay a fixed sum was qualified by reference to a fund from which the payment was to come and which might turn out inadequate from causes over which the defendant had no control."

Two other cases involving practically the same facts and where the same conclusion was reached, are

Supreme Council, etc., *v.* Getz (U. S. C. C. A.), 112 Fed. Rep. 119; and
Gaut *v.* Supreme Council, etc. (Tenn.), 64 S. W. Rep. 1070.

These views are also supported by the recent case of

Peterson *v.* Gibson, 191 Ill. 365; 61 N. E. Rep. 127.

The same principle has also been laid down by the Supreme Court of North Carolina in two cases which differ as to their facts, yet involve the same principle: —

Bragaw *v.* Supreme Lodge, 128 N. C. 354; 38 S. E. Rep. 905;

Strauss *v.* Mutual Reserve Fund Life Assn., 128 N. C. 465; 39 S. E. Rep. 55.

The cases of

Wist *v.* Grand Lodge, 22 Oregon, 271; 29 Pac. Rep. 610;

Deuble *v.* Grand Lodge, etc., 66 App. Div. 323; 72 N. Y. Supp. 755,

are also in point.

4. *The cases cited by counsel for petitioner as to after-enacted laws relate only to conduct of member and have no application here.* Numerous cases are cited by counsel for petitioner to the effect that where a certificate is issued by a mutual benefit society, wherein the member agrees that such certificate is issued subject to laws then in force or thereafter adopted, he is bound by changes in the by-laws. These cases relate without exception to the amount of assessments to be paid by the member, or to his conduct, or to the amount of sick benefits. None of them hold that an essential element of a contract affecting substantially the rights of a member can be changed without his consent. All the cases cited by counsel can be distinguished from the one at bar because the facts are different. There is no such agreement in this case because the language of the application is simply that the member will *abide* by the constitution, rules and regulations. The stipulation applies only to the conduct of the member, something to be done by him, as for example his residence,

occupation or payment of assessments. Then again it must be read in connection with section 1, article 4, of the constitution, which provides that *the policy shall constitute the basis of settlement*. Again in section 1 of article 7, it is provided that the Board of Directors *shall pay to the beneficiaries the amount set forth in the deceased member's policy of membership*.

5. *It makes no difference that this is a so-called mutual company*. Counsel for petitioner devote considerable time to the argument that, because this is a mutual company, the policy holders and not the directors, really made the change, and that the change is a reasonable one. In the first place the modern life insurance companies, whether doing business on the assessment plan or the regular, or old line, fixed premium plan, are all mutual life insurance companies, but the court will take judicial notice of the fact that these companies are managed by directors who really govern the corporation, although it sometimes occurs that the management take the precaution to obtain a proxy at the time the policy is issued which commits the member to whatever they do.

The company in question is a regular insurance corporation, managed by directors, but neither the directors, nor the policy holders, have any right to alter the contract of the company with a member without the consent of the other party to it.

The question as to the reasonableness of the change is immaterial. As the Supreme Court of Tennessee said: —

Gaut *v.* Supreme Council, etc., 64 S. W. Rep. 1070,

> "The motives which led to the adoption of this by-law are wholly immaterial, nor is the reasonable-

ness of the by-law a factor in the decision of the case. As we view the record it presents simply a question of power on the part of the association, and, being of the opinion that the passage of the law was *ultra vires* other considerations are immaterial."

For the foregoing reasons we ask that the judgment of the Circuit Court of Appeals be affirmed.

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FREDERICK H. BACON,
Attorneys for Respondent.

Supreme Court of the United States.

No. 48.—October Term, 1902.

The Knights Templars' and Masons' Life Indemnity Company, Petitioner, *vs.* Rosa B. Jarman.	On writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[December 8, 1902.]

This was a writ of certiorari to review a judgment of the Circuit Court of Appeals affirming a judgment of the Circuit Court for the Western District of Missouri, overruling the defense of suicide to an action upon a policy of life insurance, and awarding plaintiff judgment for the amount of the policy and assessments thereon.

An agreed statement of facts shows defendant to be an Illinois corporation, organized "for the purpose of furnishing life indemnity or pecuniary benefits to widows," &c.; and that on October 19, 1885, it issued to John P. Jarman, plaintiff's husband, and a citizen of Missouri, a policy of insurance or certificate of membership, subject to the constitution and by-laws of the company and certain conditions in the policy, one of which provided for its avoidance in case of self-destruction, "whether voluntary or involuntary, sane or insane." The seventh stipulation was that "John P. Jarman, while insane to such an extent as to be incapable of understanding the nature or consequences of his act, took his own life, and came to his death on the 12th day of September, 1898, by a gunshot wound, inflicted by himself. It is not contended, however, by plaintiff that such self-destruction was the result of accident." The further material facts are set forth in the opinion.

Defendant having refused to pay the amount of the policy on account of the suicide of the insured, Rosa B. Jarman, his widow and beneficiary, brought an action January 19, 1899, in the Circuit Court of Grundy County to recover the amount of the policy, $5,000, and assessments, which action was subsequently removed to the Circuit Court of the United States for the Western District of Missouri, upon the ground of diversity of citizenship. The case was submitted to the court without the intervention of a jury, and resulted in a judgment in favor of the plaintiff in the sum of $6,006.30, which was affirmed by the Circuit Court of Appeals. Whereupon petitioner sued out a writ of certiorari from this court.

Mr. Justice Brown delivered the opinion of the Court.

This case turns principally upon the applicability to the policy in question of sec. 5982 of the Revised Statutes of Missouri of 1879, afterwards sec.

5855, Rev. Stat. 1889, (hereinafter termed the suicide statute,) which was in force in 1885, when this policy was written. The section is as follows:

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

1. The first defense in order of time is that Jarman did not commit suicide within the meaning of this act, since the stipulated fact was that he shot himself while insane to such an extent as to be incapable of understanding the nature or consequences of his act. The position of the company in this connection is that the enactment above quoted, that "it shall be no defense that the insured committed suicide," relates only to cases where the insured takes his own life voluntarily, while sane, and in full possession of his mental faculties; and hence, the provision of the policy, that "in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane *or insane*, . . . this policy shall become null and void," applies, and exonerates the company from all liability beyond that provided in the policy, "that in the case of the suicide of the holder of this policy, then this company will pay to his widow and heirs or devisees such an amount of his policy as the member shall have paid to this company on the policy in assessments on the same without interest."

This contention is founded upon the ruling of this court in *Life Insurance Co.* v. *Terry*, (15 Wall. 580,) and cognate cases, to the effect that a similar provision avoiding a policy in case the insured should "die by his own hand" applied only where the insured intentionally takes his own life, while in possession of his ordinary reasoning faculties, and does not apply when he is unable to understand the moral character, the general nature, consequences and effects of the act he is about to commit, or when he is impelled thereto by an insane impulse, which he has not the power to resist.

But we are of opinion that the word "suicide" is not used in this statute in its technical and legal sense of self-destruction by a sane person, but according to its popular meaning of death by one's own hand, irrespective of the mental condition of the person committing the act. The result of the construction urged by the defendant would be that, if a perfectly sane man voluntarily and from anger, pride or jealousy, or a mere desire to escape from the ills of life, puts an end to his life, and thereby becomes guilty of the crime of self-murder, and of a fraud upon the insurance company, the company would still be responsible, unless it could be shown that the insured contemplated suicide at the time he made his application for the policy; while, if he committed the same act while *insane*, and therefore irresponsible, the statute would not apply, and the

company would not be liable under the terms of the policy, which provided that it should become void "in case of the self-destruction of the holder, . . . whether voluntary or involuntary, sane or *insane*." In the one case, as we held in *Ritter* v. *Mutual Life Insurance Co.*, (169 U. S. 139,) that is, of self-destruction by a sane man, not only would the policy be void, whether there were a provision to that effect or not, but even a contract that it should be valid under such circumstances was thought to be against public policy and subversive of sound morality, (p. 154;) while in the other case of a suicide by an insane person, the insured is guilty of no wrong to the company, if he be incapable of understanding the moral consequences of his own act, and there is no reason in law or morals why the company should not pay. It is impossible to suppose that the legislature could have contemplated such a contingency, and a construction that would lead to this result should be deemed inadmissible, unless the language of the staute were too plain to be misunderstood.

The statute was manifestly intended to apply to all cases of self-destruction or suicide, unless the same were contemplated at the time application was made for the policy, and the fact that we may have given a different construction to the same words when used in a policy of insurance does not militate against this theory. The same words may require a different construction when used in different documents, as, for instance, in a contract, and a statute; and identity of words is not decisive of identity of meaning where they are used in different connections and for different purposes. In a contract, the technical rights of the parties only are involved—in a statute, an important question of public policy. If this statute were read alone and disembarrassed by the construction given to these words in policies of insurance, not a doubt would arise as to its application to all cases of self-destruction; and when we examine the theory of the defendant, and find that it leads to the conclusion that the company would be liable if the insured had committed a fraud upon it, and would not be liable if he had taken his life, though guilty of no fraud, the theory must be rejected without hesitation. The construction we have given to the words "committed suicide" in this act is fortified by reference to sec. 6570, Rev. Stat. Missouri, 1889, referring to the construction of statutes, which provides that "words and phrases shall be taken in their plain, ordinary and usual sense; but technical words and phrases, having a peculiar and appropriate meaning in law, shall be understood according to their technical import." Undoubtedly the word suicide in its usual sense includes all cases of self-destruction.

2. We are next brought to the consideration of the applicability of the suicide statute, (sec. 5982,) to policies of this company issued at this time. This act, upon its face, applies to all insurance companies "doing business in this State," and to all policies issued by such com-

panies after the date of the act. It undoubtedly governs the rights of the parties in this case, except so far as the same may have been modified by an act passed in 1887, authorizing the incorporation of insurance companies on the assessment plan. Sec. 10 of this act (Laws 1887, pp. 199, 204) is now known as sec. 5869 of the Revised Statutes of Missouri of 1889, and provides that corporations "doing business under this article" shall make certain annual statements, which, as well as other requirements, are also made applicable to foreign companies, with the following proviso: "*Provided, always*, That nothing herein contained shall subject any corporation *doing business under this article* to any other provisions or requirements of the general insurance laws of this State, except as herein distinctly set forth." It appears that the defendant in this case, which is a citizen of Illinois, elected to take advantage of this law, and on June 18, 1888, received from the insurance department of the State authority to do business thereunder upon the assessment plan. As to policies issued upon the assessment plan subsequent to this date and prior to 1897, the Supreme Court of Missouri held that the suicide statute, above quoted, does not apply. (*Haynie* v. *Knights Templars &c. Co.*, 139 Mo. 416.) To the same effect are *Hanford* v. *Mass. Ben. Association*, (122 Mo. 50;) *Jacobs* v. *Omaha Life Association*, (142 Mo. 49,) and *Aloe* v. *Association*, (49 S. W. Rep. 553.) It is true the authority of these cases was somewhat shaken by the recent case of *Aloe* v. *Fidelity Mutual Life Association*, (55 S. W. Rep. 993,) which did not involve the repeal of the suicide statute, but of another statute, providing that no misrepresentation should be deemed material, unless the matter misrepresented should have contributed to the death of the insured. The case, however, turned, as did the cases above cited, upon the scope of the proviso of sec. 5869, and a persuasive opinion was delivered by Judge Valliant in favor of the theory that the proviso was intended to relate only to the organization of the corporations, and the extent to which they should be subject to the supervision of the Department of Insurance, and under the superintendent's control. This opinion was delivered in the first department of the Supreme Court, and, there being a dissent, the cause was transferred to the court *in banc*, wherein a majority of the court apparently differed from the views expressed by Judge Valliant, and reaffirmed the cases above cited. These cases, including the Haynie case, must therefore be regarded as representing the views of the Supreme Court that the suicide statute was actually repealed by the act of 1887 as to policies thereafter issued, and that view is, of course, binding upon this court.

But we are of the opinion that this statute was intended to be prospective in its operation, and that the rights of the defendant as an assessment company under the act of 1887 began in June, 1888, with its certificate of authority to do business under that act, and with respect to policies anterior to that date the rights of the parties are to be determined by the sui-

cide statute, sec. 5855, R. S. 1889. It must be borne in mind that the repealing act of 1887, now known sec. 5869, R. S. 1889, was not passed as an independent statute, but as section 10 of a new statute of fourteen sections, entitled "An act to provide for the incorporation and regulation of associations, societies or companies, doing a life or casualty insurance business on the assessment plan." The prior sections define what shall be deemed a contract of insurance upon the assessment plan, how the corporations are formed, what the policies should specify, giving general details with regard to the management of the business, and then providing, in section 10, for annual statements made by "every corporation doing business under this act," with the provision that "nothing herein contained shall subject any corporation doing business under this act to any provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth." This whole act, slightly amended in language, was carried inte the Revised Statutes of 1889 as chapter 89, article III. It seems to us quite clear that the declaration of the proviso that corporations "doing business under this act" shall not be subject to the general insurance laws of the State, applies only to corporations which took out a certificate of authority from the insurance department to do business on the assessment plan, and to policies thereafter issued by such companies, notwithstanding the fact that such companies may have issued policies under the general insurance laws of the State prior to the act of 1887. The words "doing business" evidently refer to issuing policies and not to paying them. A man does business when he contracts obligations—he ceases to do business when he discharges them.

This is not only the natural construction of the act, but to hold that the proviso applies to policies antecedently issued might open it to the imputation of impairing the obligation of contracts previously entered into between these companies and their insured, since these policies amounted to a special agreement on the part of the companies that they would be liable in case of suicide—an agreement upon which the insured and his beneficiary were entitled to rely. The provision of the suicide statute, that it shall be no defense that the insured committed suicide, and that any stipulation in the policy to the contrary shall be void, must be considered as imposing a condition upon every policy thereafter issued, notwithstanding any stipulation in the policy to the contrary. It must be treated as an independent and binding obligation, and as overriding and nullifying any stipulation of the parties. As Mr. Justice Gray observed in *Equitable Life Insurance Co.* v. *Clements* (140 U. S. 226): "The statute is mandatory, and controls the nature and terms of the contract into which the company may induce the assured to enter."

But we do not find it necessary to express an opinion whether, if the act of 1887 were plainly applicable upon its face to antecedent policies, it would be objectionable as impairing the obligation of contracts, entered

into between the insurance company and insured, inasmuch as we are clearly of opinion that it should not be held to apply to such unless its language imperatively demand it. (*City Railway Co.* v. *Citizens' R. Co.*, 166 U. S. 557, 565.)

Were the act of 1887 more ambiguous than it is as to its application to past transactions, we should still be disposed to apply the cardinal rule of construction, that where the language of an act will bear two interpretations, equally obvious, that one which is clearly in accordance with the provisions of the constitution is to be preferred. (Endlich on Statutes, sec. 178.) This rule was applied by this court in *Granada County Supervisors* v. *Brogden*, (112 U. S. 261;) *Presser* v. *Illinois*, (116 U. S. 252, 269,) and *Hooper* v. *California*, (155 U. S. 648, 657.)

We do not wish to be understood, however, as expressing an opinion upon the constitutionality of the act of 1887, if it were applied to prior policies, but simply as holding that, in view of the language of the act, and the doubtfulness of its constitutionality as applied to prior policies, it should only be given effect in cases of policies thereafter issued.

But there is another argument in this connection which ought not to be overlooked, and which is, in our opinion, decisive that the suicide statute is applicable to this policy. In 1897 a law was passed by the legislature of Missouri, specially applying the suicide statute to insurance companies doing business upon the assessment plan. This was done by an amendment to sec. 5869, which will hereafter be considered. Two objections to the applicability of this statute are deserving of consideration. First, that it is in conflict with art. IV, sec. 28, of the constitution of Missouri, declaring "that no bill . . . shall contain more than one subject, which shall be clearly expressed in its title;" and also art. IV, sec. 25, that "no law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose."

The act was entitled "An act to repeal section 5869 of art. III, chap. 89, of the Revised Statutes of Missouri of 1889, entitled 'Insurance companies on the assessment plan,' and to enact a new section in lieu thereof, and designated as section 5869" of the same chapter, "relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance and defense thereon, for such misrepresentations," and as first introduced contained the section as herein printed in the margin.* Subsequently the bill was amended by inserting

*SEC. 5869. Every corporation doing business under this article shall annually, on or before the first day of February, return to the superintendent of the insurance department, in such manner and form as he shall prescribe, a statement of its affairs, for the year ending on the preceding 31st day of December, and the said superintendent, in person or by deputy, shall have the power of visitation of and examination into the affairs of such corporation, which are conferred upon him in

between the word "sections" and the figures "5912" the figures "5855," (the suicide statute). This was not strictly germane to the other sections cited, which related to the purposes set forth in the title to the act, and it is argued that the legislature exceeded its constitutional powers in inserting these figures.

In the absence of an express adjudication of the Supreme Court of the State upon this question, we are forced to rely upon other decisions concerning the construction given to this provision of the State constitution. In *State* v. *Miller*, (45 Mo. 495,) it was held that the object of this provision was to prevent logrolling, and surprise and fraud on members; and in *State ex rel. Wolfe* v. *Bronson*, (115 Mo. 271, 276,) it is said that "these and other cases show that this section of the constitution is to be reasonably and liberally construed and applied, due regard being to its object and purpose. It was designed to prevent the insertion of disconnected matters in the same bill. The section asserts only two propositions. The first is that no bill shall contain more than one subject, and the second is that this single subject must be clearly expressed in the title. If all the provisions of the bill have a natural relation and connection, then the subject is single, and this too though the bill contains many provisions. As to the second proposition, namely, that the single subject must be clearly expressed in the title, it is sufficient to say that the legislature may select its own language, and may use few or many words. It is sufficient that the title fairly embraces the subject matter covered by the act: mere matters of detail need not be stated in the title." And in *State* v. *Herge*, (135 Mo. 112, 118,) it is said: "A mere reference to the section to be amended, without other description of the subject matter of the amendatory law, is under the rulings of this court a sufficient title to enact which deals exclusively with the subject matter of the section amended." It was also said in *State* v. *County Court*, (128 Mo. 440): "The practice of legislation by reference to sections of the authorized version of the statutes (without other description of the subject of the amending act) has been followed quite generally in this State on the faith of early rulings of the Supreme Court approving such methods of lawmaking. So much has been done, and so many rights have been acquired, on the basis of those rulings, that we hold that the question of their correctness ought not to be reopened

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the case of life insurance companies by the laws of this State; and all such foreign companies are hereby declared to be subject to, and required to conform to the provisions of sections 5912, 5849 and 5850 of the Revised Statutes of Missouri of 1889, and governed and controlled by all the provisions in said section contained: *Provided, always*, That nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general urance laws of this State, except as distinctly herein set forth and provided.

at this day. We adhere to them and follow them as an expression of the settled law of Missouri."

As the new act was simply an amendment of sec. 5869 these two last cases would seem to be decisive of the opinion of the Supreme Court upon the statute in question, upon which its decision is of course obligatory upon this court.

Section 5869 of the Revised Statutes of 1889 deals with four questions relating to the law of insurance by companies doing business on the assessment plan. First, providing for an annual statement; second, a visitation and examination into the affairs of the corporation; third, a general statement that foreign companies are subject to certain provisions; and, fourth, a recital as to what, among the general insurance laws of the State, shall be applicable to these companies.

While, as already stated, the Supreme Court has not decided as to the constitutional power of the legislature to incorporate the suicide statute into this amended section 5869, the decisions above cited, that a mere reference to the section amended is sufficient to sustain the validity of the law, would seem to cover the case, and for this reason the suicide statute, though not strictly germane to the other sections mentioned, is germane to the business of insurance on the assessment plan. Bearing in mind that the suicide statute was originally repealed, as to these policies, by section 5869, as enacted in 1887, it would seem that an amendment introduced into the same section restoring its application to these same policies would not be unconstitutional.

A second objection to the application of this statute is that if the petitioner be right in his contention that, by the repeal of the suicide statute, the contract between the assured and the company relieving the latter from liability in case of suicide, became effective, the legislature could not thereafter, by re-enacting the statute or attempting to subject assessment companies to its provisions, impair the contract subsisting between the assured and this petitioner.

The answer to this argument is not difficult. No new contract was made and no new rights were vested between the act of 1887, repealing the suicide statute, and the act of 1897 restoring it. All that the latter act purported to do was to reinstate the parties in their original rights prior to the act of 1887, which rights had not been affected by anything done during the ten years between the two acts. Upon defendant's theory, if the act of 1887 had been in existence but a single day the same result would have followed.

Our conclusion, then, is that the court below was correct in holding that the suicide statute, as originally applied to this policy, had not been repealed at the death of Jarman in 1898, when the cause of action arose.

3. It is also assigned as error in this case that the court permitted a recovery, not only of the amount of the policy, but of all the money paid by assured in assessments upon such policy.

The promise of the company was to pay the plaintiff "the sum of $5,000, and *all the money paid on the policy in assessments*, subject to the limitation as to the amount of such payment as is provided in sec. 1 of art. VII of the constitution on the back of this policy, which section reads as follows:

"SEC. 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall within sixty (60) days pay the widow, children or heirs of the deceased member, (and in the order named unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership: Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment; provided, it shall not exceed $5,000 and *all the money paid on the policy in assessments;* and a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates."

The assessments paid upon the policy amounted to $811.83, and the right of the plaintiff to recover this amount in addition to the principal sum of $5,000 would be beyond question, were it not for certain changes thereafter made in the constitution, which it is insisted were binding upon the plaintiff under the following clause, found in the application of Jarman for membership: "I further agree, if accepted, to abide by the constitution, rules and regulations of the company, as they now are, or may be constitutionally changed hereafter."

The application further stated that the application was made a part of the policy by reference thereto.

In virtue of the privilege thus given to amend its constitution the company, on January 8, 1889, amended art. IV, sec. 3, of the constitution so as to read as follows:

"SEC. 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to $5,000, and all the money paid in assessments upon the policy *for the first five years.*"

The proviso of art. VII, sec. 1, was also amended at the same time to correspond with the above amendment and to read as follows:

"*Provided*, That a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment; provided, that it shall not exceed, $5,000 and all the money paid on the policy in assessments *for the first five years.*"

On February 20, 1894, this section was again amended by striking out the proviso altogether.

It seems that these sections thus changed from an agreement to repay all assessments upon policies to an agreement to pay all assessments for the first five years, was found or deemed to be, too liberal; and in January, 1898, the company made an important additional amendment by striking out entirely the proviso for the repayment of assessments, under which it now claims to be relieved altogether from paying more than the principal sum of the policy. The article as finally amended reads as follows:

"SEC. 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to $5,000, but no member shall hold more than one policy at the same time, except one additional policy on the term plan," &c.

In view of the fact that both of these amendments imply a prospective operation upon policies which *may be issued*, it would seem to be unnecessary to consider the question discussed with much detail in briefs of counsel, whether the amendments were intended to operate upon policies already issued. In our opinion it is clear that they were not, and conceding the proposition that Jarman had agreed to abide by the constitution, rules and regulations of the company, as they then were, or might be constitutionally changed thereafter, this agreement could have no operation upon changes which, upon their face, indicated that they applied only to policies thereafter to be issued. To cover this case he should have promised to abide by amendments thereafter made, though they were intended to apply only to future policies.

The judgment of the court below awarding the plaintiff the full amount agreed upon in the policy, without damages, is accordingly

Affirmed.

Mr. Justice HARLAN took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.